

**ALTO YEAST  
PRODUCT OF ALTO PEKIN, LLC  
GENERAL TERMS AND CONDITIONS**



**FOR SALES OF DRIED YEAST OR YEAST CREAM PRODUCTS DELIVERED INTO OR BY TRUCK, PALLET, TOTE, BAG OR OCEAN GOING VESSEL**

**1) APPLICATION:**

These General Terms and Conditions (hereinafter referred to as "Conditions") for the sale of dried yeast or yeast cream products (hereinafter referred to as "Product") shall apply to each and every sale of Product made or caused to be made by Alto Pekin, LLC (hereinafter referred to as "Seller") to you, as the person or entity to which such sale has occurred or is to occur (hereinafter referred to as "Buyer"). These Conditions together with any individual sales confirmation (hereinafter referred to as "Confirmation") sent by Seller to Buyer whether or not executed by Buyer (hereinafter collectively referred to as the "Agreement") represent the final and exclusive agreement of Seller and Buyer with respect to the sale of Product by Seller to Buyer and shall take precedence over and override any terms or conditions stipulated, incorporated or referred to by Buyer whether in any order, in any negotiations, or otherwise. If not previously accepted, or deemed accepted, by Buyer, the Agreement shall be deemed to have been accepted by Buyer unless Seller receives written notice of Buyer's objection to the Confirmation within forty-eight (48) hours of Seller's sending such Confirmation to Buyer in accordance with the provisions of Section 15 below. Seller shall be entitled to update and/or amend these General Terms and Conditions regularly and by and as of the moment of notifying Buyer of such update or amendment, or by posting updated Conditions on its website, or by sending Buyer the updated or amended General Conditions. Any such revisions shall be effective as of the date Seller makes such revisions.

**2) QUOTATIONS, ORDERS, AND CONFIRMATION:**

Price quotations (hereinafter referred to as "Conditions") made by Seller in whatever form, are not binding upon Seller and merely constitute an invitation to Buyer to place an order. All Quotations issued by Seller are revocable and subject to change without notice. Orders are not binding until accepted by Seller as evidenced by a Confirmation. Seller shall be entitled to refuse an Order without indication of its reasons. Quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities. Statements and agreements made by Seller's employees, officers, representatives and/or agents are not binding upon Seller unless, and only to the extent that, these are confirmed via Confirmation or made in writing by duly authorized representative(s) of Seller. Except as provided for in Section 4, any samples supplied to Buyer are supplied solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Product. 2.5 Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

**3) PRICES, PAYMENT AND BUYER'S CREDIT:**

The price of Product shall be set out in Seller's Confirmation. The amount of any taxes levied in connection with the sale of the Products to Buyer shall be for Buyer's account and shall be added to each invoice or separately invoiced by Seller to Buyer. If Seller grants a discount, this discount shall only relate to the delivery specifically mentioned in Seller's Confirmation. Unless the prices have been indicated as firm by Seller in the Confirmation, Seller is entitled to increase the price of the Products still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by Seller from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Seller shall notify Buyer of any such increase. All payments shall be made in U.S. dollars and must be received by Seller within the payment terms stipulated in the Agreement without deduction, discount, offset or counterclaim. If no payment due date is otherwise specified in the Agreement, the Buyer shall pay Seller within ten (10) days of Seller's invoice date based on the date of loading or unloading, as applicable. Seller reserves the right to charge Buyer interest for late payments at the rate of 1.5 % per month, but in no event in excess of any legal limit, for the period of time that any payment under the Agreement is past due. Stipulation of interest rate does not imply granting of extended credit, nor does it relieve Buyer of the obligation to pay by the due date, nor does it deprive Seller of any right it has hereunder, in law or otherwise, including, but not limited to, at its option, suspending or terminating the Agreement. Buyer shall notify Seller of any dispute with respect to an invoice within seven (7) days after the date of invoice. Upon expiration of the seven (7) day dispute period, Buyer shall be deemed to have approved the applicable invoice.

**4) QUALITY, AND EXAMINATION AND LIMITED PRODUCT WARRANTY:**

On delivery and during the handling, use, processing, transportation, storage and sale of Product, Buyer may inspect, test and take samples of Product to satisfy itself that Product received meets all agreed specifications ("Specifications") and contractual requirements. A determination of whether or not delivered Product conforms to Specifications as stated in Seller's Confirmation or, in the absence of agreed Specifications, to the most recent specifications held by Seller at the time of delivery of the Product, shall be derived solely by analyzing the samples or records retained by Seller and taken from the batches or production runs in which the applicable Product was produced in accordance with the methods of analysis used by Seller. Products that Seller consents or directs in writing to be returned shall be returned to Seller at the risk of Buyer, to the destination directed by Seller. Upon Seller's receipt of notice of Product non-conformance

from Buyer, Seller shall be entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been fully cured. Absent written notice of Product non-conformance, Buyer's acceptance of delivery shall be deemed to have accepted said Product, AS IS. Buyer waives any claims against Seller respecting the condition, quality and/or fitness of the Product so delivered and accepted, anything in the National Grain and Feed Association Feed Trade Rules ("NGFA Rules") notwithstanding. If and to the extent Product fails to meet Specifications, Seller may at its sole option within a reasonable time replace Product at no charge to Buyer, or issue a credit for any such Product in the amount of the original invoice price. Accordingly, SELLER'S OBLIGATION SHALL BE LIMITED SOLELY TO REPLACEMENT OF THE PRODUCT OR FOR CREDIT OF THE PRODUCT. Seller's obligation to replace or issue credits shall be contingent upon receipt by Seller of timely notice of any alleged non-conformance of Product in accordance with Section 15 of these Conditions and, if applicable, the return of the Product. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PURPOSE, OR ABSENCE OF INFRINGEMENT OF ANY CLAIM IN ANY INTELLECTUAL PR

**5) TITLE AND RISK OF LOSS:**

**5.1 FOB SALES:** For sales of Product delivered at Seller's yeast production or leased or owned storage facilities, and for sales delivered from Seller's or its agent's truck, tote, bag or pallet, in either case delivered to Buyer's or its agent's truck, tote, bag or pallet, delivery shall be deemed complete, and title and risk of loss of Product shall pass from Seller to Buyer when Product passes into Buyer's or its agent's truck, tote, bag or pallet. For all such sales, Buyer shall make available to Seller, a sufficient number of trucks, totes, bags and/or totes, as applicable, to receive and transport Product being delivered by Seller hereunder at the times such Product is ready to be delivered by Seller. Buyer shall assure that all such trucks, totes, bags and/or ocean totes are properly maintained, in proper working condition, free from leaks and contamination and meet all applicable federal, state and local laws and regulations, as well as all requirements instituted by the applicable common carrier(s).

**5.2 DELIVERED SALES:** For sales of Product delivered from Seller's or its agent's truck, railcar, or ocean going vessel to Buyer's or its agent's facilities, delivery shall be deemed complete and title to and risk of loss of Product shall pass to Buyer when Product passes from the truck, railcar or ocean going vessels, into Buyer's or its agent's control. For all such sales, Seller shall be responsible for the trucks, railcars, and ocean going vessels, as applicable, including their procurement and scheduling. Seller shall notify Buyer of the scheduling of the delivery of such Product, and Buyer shall be responsible for assuring such Product will be received in accordance with the schedule. In such event (i) Seller shall be responsible for ensuring that all such trucks, railcars, and ocean going vessels are properly maintained, in proper working condition, free from leaks and contamination and meet all applicable federal, state and local laws and regulations, as well as all requirements instituted by the applicable common carrier(s), and (ii) no allowance for shortage or damage will be made by Seller unless Buyer furnishes written acknowledgement from the carrier that same occurred in transit, and then only to the extent set forth elsewhere in, and to the extent Seller complies with the other requirements of, the Agreement.

**5.3** Notwithstanding anything contrary in the Agreement, ownership of Product shall not pass to Buyer until Seller has received in full (in cash or cleared funds) all sums due to it in respect of Product and all other sums which are or which become due to Seller from Buyer on any account. Until ownership of Product has passed to Buyer, Buyer shall hold Product on a fiduciary basis as Seller's bailee. In the event of termination on the basis of Section 6 of these Conditions, Seller shall, without prejudice to any other rights of Seller, be entitled to require immediate re-delivery of the Product for which it may invoke a retention of title.

**6) SUSPENSION AND TERMINATION:**

If (a) Buyer is in default of performance of its obligations under the Agreement; or (b) if Seller has reasonable doubts with respect to Buyer's performance of its obligations under the Agreement and Buyer fails to provide Seller with adequate assurance of Buyer's performance prior to the date of scheduled delivery, in any case within thirty (30) days of Seller's demand for such assurance; or (c) if Buyer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (for purposes other than a reconstruction or amalgamation); or (d) any bankruptcy proceeding shall be instituted by or against Buyer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Buyer; (e) or if Buyer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of Seller, Seller may by notice in writing forthwith (i) demand re-delivery and take repossession of any delivered Product which have not been paid for, for which purpose Buyer hereby grants an irrevocable right and license to Seller to immediately enter upon all or any of the premises where the Product are or may be located and all costs relating to the recovery of the Product shall be for the account of Buyer; and/or (ii) suspend its performance or terminate Seller's Confirmation for outstanding delivery of Product unless Buyer makes such payment for Product on a cash in advance basis or provides adequate assurance of such payment for

Product to Seller in accordance with Section 7; without any intervention of courts being required and without liability for Seller of whatsoever kind arising out of or in connection with such suspension or termination. In any such event of (i) and/or (ii), all outstanding claims of Seller shall become due and payable immediately with respect to the Product delivered to Buyer and not re-possessed by Seller.

**7) FINANCIAL RESPONSIBILITY:**

If the financial responsibility of Buyer should at any time become impaired (including but not limited to insolvency, bankruptcy or receivership proceedings), unsatisfactory or unacceptable credit as determined by Seller in its sole discretion, or if sales would or could exceed then approved credit lines, then Seller shall have the right to demand security or advance cash payment which shall be delivered to the Seller by the Buyer within two (2) business days of Seller's first demand, and deliveries of product may be withheld until such security so demanded by Seller is received. If such security is not received within the time specified by Seller, this shall constitute a material breach and Seller shall then have the right (in addition to and without waiving any other rights which Seller may have) to immediately terminate its performance hereunder without any liability therefor. In addition, in the event of such a material breach, all amounts owed by Buyer (including amounts not yet invoiced) shall be immediately due and payable. Seller has the right to reduce or eliminate Buyer's credit line upon giving written notification to Buyer. Seller's rights under the Agreement shall not be affected or impaired by Seller's having either accepted late payment from Buyer or having allowed Buyer to exceed approved credit lines on other occasions.

**8) TAXES:**

Whenever the laws, ordinances and regulations permit, Buyer shall assume and be responsible to the proper governmental units for any and all taxes, excises, charges and other fees now or hereinafter imposed by any governmental agency or authority (federal, state, local or otherwise) that may be applicable to the transportation, sale, delivery, use and/or other handling of product(s) hereunder. In those cases in which the laws, regulations or ordinances impose upon Seller the obligation to collect or pay such taxes, excises, charges or other fees, Seller shall invoice Buyer the amounts for which Seller is liable and Buyer shall reimburse Seller by the due date reflected on the invoice. All prices to be paid by Buyer for Products under the Agreement are exclusive of all taxes, excises, charges and other fees which are the subject of this paragraph. If Buyer is entitled to purchase Product(s) free of any tax, excise, fee or charge, Buyer shall furnish to Seller proper exemption certificates to cover such purchase or purchases. Buyer agrees to indemnify Seller and its supplier(s) and its and their agents (including any of their respective transporters) and to hold them harmless from and against all liability, costs and expenses (including, without limitation, attorney's fees and costs) for any and all taxes, excises, charges and other fees which are the responsibility of Buyer hereunder and/or for which Buyer is obligated to reimburse Seller hereunder.

**9) FORCE MAJEURE:**

Failure (in whole or in part) or delay on the part of either party in the performance of any of the obligations imposed upon such party hereunder shall be excused, and such party shall not be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes (each a "Force Majeure Event"), whether or not existing at the date hereof, and whether or not reasonably within the contemplation of the parties at the date hereof, including: Acts of God, earthquakes, fire, flood, or the elements, malicious mischief, insurrection, riot, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, war (declared or undeclared), acts of terrorism, compliance with any federal, state or municipal law, or with any regulation, order, rule, recommendation or request (including, but not limited to, priority, rationing or allocation orders or regulations) of governmental agencies, or authorities or representatives of any government acting under claim or color of authority; total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of its obligations under the Agreement, whether such facilities are such party's own or those of others; or if failure or delay be that of Seller, total or partial loss or shortage of raw or component materials or products ordinarily required by Seller (including without limitation, partial or entire failure of Seller's suppliers to supply or otherwise product to Seller or the material partial or total disruption of Seller's production operation by which its yeast products are produced); the commandeering or requisitioning by civil or military authorities of any raw or component materials, products, or facilities including but not limited to manufacturing, transportation and delivery facilities; perils of navigation, even when occasioned by negligence, malfeasance, default or errors in judgment of the pilot, master, mariners or other servant of the ship's owner; or any cause whatsoever beyond the control of either party hereto, whether similar to or dissimilar from the causes herein enumerated. If, by reason of said causes, Seller is unable to make deliveries to all its customers under written contract, its failure in whole or in part to make deliveries to Buyer, shall not be a breach of the Agreement so long as Seller allocates all its written contract customers proportionally with respect to Product. In no event, will Seller be obligated to make up deliveries to Buyer. Seller may suspend deliveries so long as its cost of performance is increased and the increased cost cannot be recovered by an equivalent increase in the price to be paid by Buyer. Nothing herein (including without limitation in this paragraph 8) shall excuse Buyer from paying Seller, when due, any amounts payable hereunder or pursued hereto.

**10) QUANTITY MEASUREMENT:**

Scales and other measuring devices belonging to the Seller or its agents or suppliers and used hereunder shall be deemed conclusive of the quantities delivered to Buyer, unless either party notifies the other of any errors in measurement within 24 hours after the delivery. For Delivered Sales made by truck, railcar or ocean going vessel, as described in Section 5.2 above, the quantities delivered shall be determined from the measurement at the point of origin where the Product was produced or packaged.

**11) ALLOCATION OF SUPPLY:**

Notwithstanding anything in the NGFA Rules to the contrary, in the event of any curtailment, shortage or cessation in Seller's existing or contemplated supply of Product to be sold hereunder, or in the raw materials used to manufacture such Product, irrespective of the cause or foreseeability of such curtailment, shortage, or cessation, and in the event of Seller's inability to comply with any or all of its obligations to Buyer and others to whom it is bound under then existing contracts or with whom it has had historical relationships, Seller, at its discretion, but in a commercially reasonable manner, upon giving notice, may withhold, suspend, or reduce sales resulting therefrom. Seller will not be obligated to purchase Product in the open or spot market to supplement Seller's existing or contemplated supply of such Products in order to invoke this paragraph.

**12) DAILY VOLUME LIMITATION:**

Seller has the right to limit the total volume delivered to Buyer on any given day to the average daily volume to be delivered by Seller during the applicable delivery period under the Agreement. By way of example, if Buyer enters into a contract with Seller to purchase 330,000 pounds of Product during the month of November which is an average of 11,000 pounds per calendar day, Seller may, in its sole discretion, limit the volume delivered to Buyer on any given day to 11,000 pounds. This paragraph is without prejudice to Seller's other rights and Buyer's obligations herein the Agreement.

**13) ASSIGNMENT:**

Buyer shall not assign the Agreement or any rights thereunder without the prior written consent of Seller, which consent will not be unreasonably withheld. The Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, representatives and permitted assigns.

**14) AMENDMENTS:**

No amendment, modification or waiver of any provision(s) of the Agreement shall be effective unless in writing and signed by both parties hereto.

**15) NOTICES:**

All notices shall be in writing, and shall be sent by an authorized representative of the party giving such notice. Notices directed to either party shall be sent by United States mail, registered or certified, postage prepaid, by overnight delivery service, by electronic communication such as e-mail or personally delivered to the party for whom intended at the appropriate address stated in the Agreement. Any notices to Seller shall include a copy sent by mail to: Alto Yeast, LLC, c/o Alto Ingredients, Inc., Attention General Counsel, 1300 S. Second Street, Pekin, IL 61554 or faxed to: (916) 403-2785.

**16) INDEMNIFICATION:**

Buyer shall protect, indemnify, save harmless, render whole, and, at Seller's option, defend Seller, its parent, their respective subsidiaries and affiliates and the shareholders, owners, directors, officers, employees, agents and co-venturers of any of them, from any and all claims, demands, expenses (including by not limited to reasonable attorney's fees), costs, losses, damages, fines, and causes of action which may be made, sustained, incurred, or initiated by any person(s) or entities, including but not limited to Buyer, its employees and agents and any governmental entities, arising from, caused by, or resulting in any way, in whole or in part, from the resale, use, handling, transportation, or storing of the Product, or from the operation and conduct of Buyer's business, or from any event occurring after the passage of title to the Product to Buyer, except to the extent these claims, demands, expenses, costs, losses, damages, fines, and causes of action arise from, are caused by, or result from, the sole gross negligence of Seller.

**17) UNENFORCEABILITY:**

Any provision(s) of the Agreement which is (at any time) legally unenforceable shall be ineffective only to the extent of such unenforceability without thereby invalidating the remaining provisions of the Agreement (including the remaining enforceable portion of any affected paragraph) or affecting the validity or enforceability of the Agreement as a whole. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

**18) INSURANCE:**

Buyer shall carry and maintain in an insurance company or companies rated at least A- VII by A.M. Best and Company and in policies of insurance or self-insurance acceptable to Seller.

**19) ENTIRETY OF AGREEMENT:**

No prior stipulation, agreement or understanding of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

**20) LIMITATION OF LIABILITY:**

THE LIABILITY OF SELLER FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF BUYER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO

BUYER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON ANY DEMURRAGE OR DETENTION CHARGES, LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

**21) FAILURE OF BUYER TO PURCHASE PRODUCT:** In the event the Agreement specifies that Buyer is to purchase and receive a certain quantity of Product during a particular month or other specified delivery period and Buyer fails to so purchase and receive such quantity of Product during such period, unless such failure is due to a Force Majeure Event, as further defined in Section 9, for which Buyer gave Seller prompt written notice upon the occurrence of such Force Majeure Event, then, at Seller's option, either (i) Seller may demand that Buyer pay Seller as liquidated damages an amount equal to the quantity of Product which Buyer so failed to purchase and receive multiplied by the price which Buyer would have paid for such Product had Buyer actually purchased such amount, with such payment to be made by Buyer to Seller within ten (10) days of the date of Seller's invoice for such amount, or (ii) Seller may reduce the quantity of Product to be delivered and sold by the quantity of Product which Buyer so failed to purchase and receive. In the event Seller selects the option under item (i), Buyer and Seller agree that, Seller will deliver, and Buyer will receive the quantity which Buyer so failed to purchase and receive at mutually agreeable time(s) following the end of the term of the Agreement, unless Seller and Buyer otherwise agree in writing to different time(s) in which such delivery and receipt will occur.

**22) GOVERNMENTAL PRICE CONTROL AND OTHER GOVERNMENTAL CHANGES:**

If Seller's right to charge or receive any price payable pursuant hereto, or to revise any such price as herein provided, is restricted or prohibited by law, regulation or order of any governmental authority, Seller may, from time to time and upon thirty (30) days' prior written notice to Buyer, terminate the provisions of the Agreement. In addition, if Seller's performance under the Agreement is subjected to additional law, rule or order of any governmental authority, or is adversely affected by any law, rule or order of any governmental authority, in each case as determined by Seller in its sole discretion, Seller may, from time to time, upon thirty (30) days prior written notice to Buyer, terminate the provisions of the Agreement.

**23) PRICE ADJUSTMENTS:**

If the prices hereunder are to be determined by reference to Seller's price postings, listings or schedules, (i) Seller reserves the right to change the prices so posted, listed or scheduled at any time without notice to Buyer, and (ii) the prices hereunder shall be determined from time to time by reference to the posted, listed or scheduled prices then currently effective.

**24) GOVERNING LAW:**

This agreement shall be interpreted, governed, and construed under the laws of the State of Illinois as if executed and to be performed wholly within the State of Illinois. The parties hereto consent to the exclusive jurisdiction of the state and federal courts in Illinois with regard to all disputes hereunder, excluding principles of conflict of law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**25) LIMITATION OF ACTION:** No action by Buyer shall be brought unless Buyer first provides written notice to Seller of any claim alleged to exist against Seller within thirty (30) days after the event complained of first becomes known to Buyer and an action is commenced by Buyer within twelve (12) months after such notice.

**26) FREIGHT RATES:**

The prices referenced in the Agreement are based on existing freight rates, and if under the Agreement Seller is to pay freight and the rates subsequently increase, the price shall be increased accordingly. If under the Agreement, Seller is to pay freight, and the parties thereafter mutually agree that Buyer will pay such freight, a freight allowance shall be negotiated to offset the prices in the Agreement.

**27) NOMINATIONS:**

It is the responsibility of Buyer to nominate to Seller a proposed monthly shipment schedule forty-five (45) days prior to the month of shipment in order for nominations to be accepted by Seller. In the event the individual Confirmation includes a variance above or below a specified quantity (e.g. plus or minus 5% of a specified quantity), Buyer's nomination of its proposed monthly shipment schedule shall include the specific variance quantities in the quantities nominated by Buyer pursuant to the preceding sentence (e.g. if the individual sales confirmation specified 33,000 pounds for a specific month with a variance of plus or minus 5%, and Buyer desires to receive 33,000 pounds plus an additional 5% for that month, Buyer's nomination of its proposed monthly shipment schedule for that month shall total 34,650 pounds for that month). Following Seller's receipt of Buyer's timely nomination for any month, Seller shall determine, consistent with the other provisions of the Agreement, the quantities Seller will deliver in accordance with Buyer's proposed monthly shipment schedule. If Seller determines it will not be able to deliver all of the quantities nominated by Buyer in accordance with Buyer's proposed monthly shipment schedule, Seller shall notify Buyer and provide Buyer any revisions to Buyer's proposed monthly shipment schedule. If Buyer has objections to Seller's revisions of Buyer's proposed monthly shipment schedule, Buyer shall immediately notify Seller of such objections and Seller and Buyer shall endeavor to resolve such differences. If Seller and Buyer are unable to resolve such differences, Seller's revisions shall control as long as they are consistent with the other provisions of the Agreement. If the monthly shipment schedule

nomination is received by Seller after the 15<sup>th</sup> day of the month preceding the month of shipment, Seller shall make reasonable efforts to accommodate Buyer's shipment nomination, but, Seller shall not be obligated to provide Product according to such shipment schedule. If Seller fails to deliver Product to Buyer in any month in accordance with this Section 27, Buyer shall provide Seller notice in writing of such failure within ninety (90) days following the end of such month, which notice shall specify the quantities of Product Seller so failed to deliver and the contractual basis under the Agreement (in reasonable detail) as to why Seller was obligated to deliver such quantities of Product. If Buyer fails to provide Seller such notice within such ninety (90) day period, any claims arising out of or relating to such failure shall be waived in their entirety.

**28) DEFINITIONS:**

Unless otherwise stated in the Agreement, the following terms shall have the meanings set forth below:

"Pound" or "pound" shall mean a measure of weight equal to 16 ounces or 453.592 grams.

"Tote" or "tote" shall mean a measure of weight equal to 1,800 or 2,200 Pounds

"Bag" or "bag" shall mean a measure of weight equal to 50 pounds or 55 Pounds or 25 Kilograms.

"Pallet" or "pallet" shall mean a measure of 40 "bags" or 1 "tote".

**29) GENERAL PROVISIONS:**

Any increase in Seller's cost for truck, or ocean going vessel transportation subsequent to the date of the Agreement, may be added by Seller to the price, which increase Buyer agrees to pay to Seller.

Where Product is delivered by truck, price is based on unloading time not to exceed one hour per full truckload from time of arrival at destination. Should truck be detained beyond one hour, Buyer shall pay all additional costs incurred by Seller for time in excess of one hour.

Seller shall not be liable for any loss, damage, injury, or other casualty to the premises where delivery is made, or to the person or property of Buyer, arising out of or by reason of any delivery made hereunder, except to the extent such loss, damage, injury or other casualty is caused solely by the gross negligence of Seller in making such delivery.

Where Seller is delivering Product to Buyer's or its agent's premises (whether owned or leased), Buyer hereby authorizes janitor, superintendent, caretaker or other agent or occupant of the premises to sign receipts for deliveries at aforesaid premises, which signed receipts shall be binding on the Buyer. Seller shall have ready access to such premises for purposes of delivery without delay.

The Agreement will not be disclosed in whole or in part by Buyer to any third party without obtaining the prior written consent of Seller unless such disclosure is required by law, is necessary to obtain regulatory approval or reporting or for obtaining any necessary financing, and then only to the extent so necessary.

It is agreed that the waiving of any of the provisions of the Agreement by either party shall be limited to the particular instance and shall not be deemed to be any future or other waiver of the provisions of the Agreement. No waiver shall be binding unless executed in writing by the party making the waiver.

All paragraph headings used herein are for convenience of reference only and shall not be considered in the interpretation or construction of any provision hereof.

In the event of any conflict between these General Terms and Conditions and the other provisions of the Agreement, the other provisions of the Agreement shall control.

**END OF DOCUMENT**