

TERMS AND CONDITIONS

Acceptance: These Terms and Conditions ("Terms") shall be binding upon ConAgra Foods Food Ingredients Company, Inc. dba Spicetec Flavors & Seasonings ("Seller") and the buyer ("Buyer") under the relevant Seller commitment letter shall form the Agreement ("Agreement"). All deliveries of goods described in the Agreement (the "Goods") by Seller to Buyer shall be delivered and accepted upon the terms and conditions set forth in this Agreement. Based upon this Agreement with Buyer, Seller has relied to its detriment that Buyer will fully perform hereunder by immediately placing orders to various inputs related to the Goods ordered by Buyer.

Extension of Credit and Collections: Should Buyer's financial strength become unsatisfactory to Seller, Seller may, in its discretion, withhold further shipments, require immediate cash payments for past and future shipments or require other security satisfactory to Seller before further deliveries shall be made. If Buyer fails to pay Seller in accordance with this Agreement, Seller has the right, in addition to any other rights or remedies provided by contract or law, and subject to any right Buyer has by law to correct its default, to declare the entire balance of Buyer's account immediately due and payable or to foreclose any security interest that Seller may have in the Goods delivered. If any unpaid balance is referred for collection, Buyer agrees to pay (in addition to all damages otherwise available to Seller), to the extent permitted by law, reasonable attorney fees, whether or not litigation is commenced or prosecuted to final judgment, plus any court costs or expenses incurred by Seller, and any finance charge accrued on any unpaid balance owed by Buyer, all as calculated in accordance with this Agreement, until all amounts owed to Seller that are due are under this Agreement are paid in full.

Finance Charges: If Buyer fails to pay any invoice amounts due by their respective due dates, Buyer agrees to pay all FINANCE CHARGES on the unpaid balance of all overdue invoices, less any applicable payments and credits, from the date the total amount of each invoice is due and payable at an ANNUAL PERCENTAGE RATE of EIGHTEEN PERCENT (18%), or the highest applicable and lawful rate on such unpaid balance, whichever is lower.

Installation Contract: If this Agreement requires or authorizes the delivery of goods in separate lots to be separately accepted by Buyer, Buyer may only refuse such portion of such lot or shipment that fails to comply with the requirements of this Agreement. Buyer may not refuse to receive any lot or portion of Goods shipped hereunder for failure of any other lot or portion of a lot to be delivered or to comply with this Agreement, unless such right of refusal is expressly provided for on the face hereof.

Inspection, Acceptance, Returns, Restocking: Buyer shall inspect Goods sold hereunder immediately upon receipt of the same at Buyer's facility. **UNLESS WRITTEN NOTICE OF REJECTION, SPECIFYING THE GROUNDS THEREFOR, IS RECEIVED BY SELLER WITHIN TEN (10) DAYS FROM THE DATE OF RECEIPT OF SHIPMENT BY BUYER, SUCH GOODS SHALL AUTOMATICALLY BE DEEMED ACCEPTED.** Goods, once accepted, may not be returned without prior written approval by Seller and, if Seller provides such approval Buyer agrees to pay a restocking charge of 25% of the invoice price for the returned Goods.

Confidential Information: All information provided by Seller hereunder, including, but not limited to, the terms and conditions of this Agreement must be held in confidence by Buyer. This obligation shall survive the termination or expiration of this Agreement.

Shipments: When the basis of shipment is F.O.B. delivery of goods by the Seller to the carrier at point of shipment shall constitute delivery to Buyer. Buyer shall furnish Seller complete shipping instructions (and when required, the necessary containers) at least fourteen (14) days before the time of shipment. If there is more than one installment of goods shipped or stipulated herein to be shipped, this Agreement shall be construed to be severable as to each installment and breach or default of either Buyer or Seller as to any installment or installments shall not give the other party a right to cancel this Agreement, except as herein otherwise expressly provided.

Payment Terms, Taxes and Freight Rates: The applicable payment terms under this Agreement shall be payable upon receipt of invoice or as otherwise stated on Seller's invoice. Any and all increases, changes, adjustments or surcharges (including, without limitation, fuel surcharges) which may be in connection with the freight charges, rates or classification included as part of this Agreement, shall be for the Buyer's account. The prices set forth within this Agreement include any and all taxes, impositions, exactions, or charges of every nature in effect on the date of the execution hereof. Any and all taxes, impositions, exactions or charges, or any increase therein, whether for revenue or for regulation of commerce, or for any other purpose, not in effect on the date of this Agreement, which may, prior to the conception of deliveries hereunder, be levied, imposed, required, or increased by the United States or any State thereof or other Governmental agency on or measured in terms of any of the finished products remaining unshipped and which are to be delivered hereunder, or on or measured in terms of any commodity used in the manufacture of such containers, or the processing, purchase, sale, holding for sale, distribution, dealing in, transportation, use or handling of any of such products, commodities or containers, if paid or borne by Seller directly or indirectly shall be billed separately to Buyer, where not prohibited by law, and where the determination of the amount of the tax, imposition, exaction, charge or increase per unit of measure is possible of calculation by the application of any official published conversion rate or otherwise, and shall be paid by Buyer to Seller. Any of such taxes, impositions, exactions, charges or increases which the Seller shall be finally relieved from paying or which shall be later refunded or returned to Seller at any time and for any cause shall be refunded or credited to Buyer by Seller as promptly as possible after deduction by Seller of any reasonable expenses incurred in preventing collection of such taxes, impositions, exactions, charges or increases or in obtaining or securing such refunds or returns and in making such reimbursement to Buyer, and after paying and discharging all tax liabilities to which Seller may be subjected by reason of its having been relieved from paying such taxes, impositions, charges or increase or having secured such refunds or returns. Seller shall be under no obligation to contest the validity of any such tax, imposition, exaction, charge or increase or to prosecute any such claims for refunds or returns, but in the event Seller does not elect to contest such taxes, impositions, exactions, charges, or increases, or to prosecute such claims for refunds, Buyer shall be entitled to an assignment on mutually acceptable conditions of all to Seller's rights and causes of action in the premises.

Title & Risk Loss: Unless otherwise stated in this Agreement or any other contract between the parties, title to the Goods and risk of loss shall pass to Buyer when the Goods sold hereunder are placed in the hands of the carrier, and Buyer hereby assumes all responsibility for shortages, losses, delays or damage in transit thereafter.

Force Majeure: The Seller shall not be liable for any failure or delay of delivery hereunder, where such failure or delay has been occasioned by fire, floods, earthquakes, embargo, acts of terrorism, strikes, wars, accidents, acts of God, crop failure or shortage, strikes or labor disturbances, voluntary or involuntary compliance with any valid or invalid law, or regulation of any governmental agency or authority, lack of transportation facilities, or other causes beyond the control of Seller. In the case where shipment is delayed by the above causes, Seller shall not be relieved from making shipment of or Buyer from accepting delivery at the agreed price, when the causes of such delay are removed. Seller reserves the right to pro-rate the quantity of Goods described on the face hereof or cancel this Agreement in total in the event of crop failure or shortage, or for any other reason beyond Seller's control.

Limited Warranty: Seller warrants that the Goods sold hereunder, as of the date of shipment, shall be wholesome and otherwise fit for human consumption and not in violation of any State or Federal laws or regulations, and are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, nor are they goods which may not, under the provisions of that Act, be introduced into interstate commerce. Seller further warrants the Goods sold and delivered hereunder will conform to the description set forth in this Agreement. **SELLER MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS DESCRIBED HEREIN, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM BUYER'S PURCHASE OR USE OF SUCH GOODS OR FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING THEREFROM. SELLER'S TOTAL LIABILITY TO BUYER FOR ANY BREACH OF THIS LIMITED WARRANTY, OR FOR ANY CLAIM THAT THE GOODS DELIVERED HEREUNDER WERE DEFECTIVE OR NON-CONFORMING, SHALL BE LIMITED TO THE INVOICE PRICE OF ANY GOODS SHOWN TO BE DEFECTIVE, NON-CONFORMING, OR IN VIOLATION OF THE LIMITED WARRANTY PROVIDED HEREIN.** Any action or claim under this Agreement shall be commenced within one (1) year after delivery of the respective Goods to Buyer.

Indemnification: Buyer shall be solely responsible for determining the adequacy of the Goods sold hereunder for any and all uses to which Buyer shall apply said Goods. Buyer agrees to hold Seller harmless from and against any and all claims arising out of connected with or in any way related to this Buyer's use of the Goods and to indemnify Seller against any and all

such claims, suits, loss, damage, or other liability which may arise in connection with Buyer's use of the Goods covered by this Agreement. Seller agrees to indemnify and defend Buyer from all claims arising from Seller's breach of its warranties hereunder, except to the extent such claims are caused by the negligence or intentional misconduct of Buyer or its agents or employees, including, but not limited to, the failure to utilize good manufacturing practices and appropriate foreign materials controls, and provided Buyer gives notice to Seller of such and does not settle without Seller's consent.

Arbitration /Applicable Law/Jurisdiction /Waiver of Jury Trial: Any controversy or claim arising out of, or relating to, this Agreement, or any breach thereof, shall be settled by arbitration conducted in Omaha, Nebraska in accordance with the Nebraska Uniform Arbitration Act, Neb Rev. Stat. § 25-2601 et. seq. as it may be in effect at the time a request for arbitration is delivered. The rights of the parties hereunder shall be construed under and governed by the laws of the State of Nebraska without regard to its conflicts of laws rules. Buyer and Seller acknowledge that although they intend arbitration to be mandatory, if the arbitration provision contained herein is deemed unenforceable such that litigation results, any such litigation involving this Agreement shall only be brought in either the state or federal courts located in Omaha, Douglas County, Nebraska, and the parties each hereby waive their right to object to such forum on the basis that it constitutes an inconvenient forum or that such courts lack in personam jurisdiction. The parties mutually waive their right to trial by jury in any suit arising under or connected with this Agreement.

Notices: Any notices required under this Agreement shall be deemed properly given when sent via facsimile transmission and/or certified mail, return receipt requested, to Buyer or Seller, at the address on the face hereof, or at their principal place of business, and, in any event, with a copy to Spicetec Flavors & Seasonings, Attn: Sales / Contracts Administration, Eleven ConAgra Drive, Omaha, Nebraska 68102. Notice hereunder shall be deemed to have been given on the date posted or faxed.

Buyer's Default: If Buyer fails to make any payment when due, fails to perform any other of its obligations hereunder, or breaches any other agreement between the parties, or if Buyer makes any assignment for the benefit of its creditors, or if a petition under any State or Federal bankruptcy or insolvency law is filed by or against Buyer, or if a receiver of Buyer's property is appointed, then Buyer shall be in breach of this Agreement, and Seller shall, in addition to any other remedy, have the right to immediately withhold further deliveries and the right to terminate this Agreement immediately by written notice to Buyer.

Assignment: Buyer may not assign, convey or transfer this Agreement or any interest herein or undertake any transaction or series of transactions which would result in a transfer of this Agreement or any interest herein, or sublicense or assign any rights or obligations hereunder, or delegate or subcontract performance of any obligations hereunder, in whole or in part, to any third party or parties, without the prior written consent of Seller. Any attempt to do any act prohibited herein shall be void and shall, at Seller's option have the effect of terminating this Agreement effective immediately upon Seller's giving Buyer notice of such termination. The above prohibition against the assignment or transfer of this Agreement, or any part hereof, shall include a prohibition against the sale of (a) a controlling interest in the stock of Buyer or any entity which, either indirectly or directly, owns or controls Buyer or (b) all, or substantially all, of Buyer's assets.

Interpretation: Whenever possible, each provision of this Agreement and any invoices or subsequent written contracts executed pursuant to this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any invoice or contract related hereto shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any invoice or contract related hereto. Any failure by Seller to exercise any right or remedy hereunder shall not be construed as a waiver of the exercise of that right or any other right at any subsequent time prior to payment of all amounts due Seller.

Buyer's Purchases: Buyer agrees that should the term of this Agreement expire, for any reason, without Buyer having accepted delivery of the full quantity of Goods, as stated on the front side of this Agreement, Seller shall notify Buyer of Buyer's failure to purchase such Goods in the required quantities and shall give Buyer thirty (30) days to respond to Seller directing Seller where to ship such Goods with an invoice to be sent to Buyer. Should Buyer refuse such delivery or fail to respond to Seller within such thirty (30) day period, Seller shall have the right to destroy or otherwise dispose of such Goods and Buyer shall pay for such Goods, as well as for the destruction costs and storage costs incurred by Seller beyond the term of this Agreement and any other related costs. Buyer shall also be responsible for inputs purchased by Seller uniquely for the production of the Goods for Buyer including, but not limited to, packaging materials and ingredients.

Entire Agreement: This Agreement, together with any invoices issued hereunder and any other written contracts executed pursuant to this Agreement, incorporate all the understandings of the parties with respect to the matters contained herein and supersede all prior agreements, negotiations or communications, whether oral, written, or implied concerning the subject matter of this Agreement. In the event of any discrepancy between this Agreement and any invoice or other agreement between the parties, the terms of this Agreement shall control.