

TERMS AND CONDITIONS

Acceptance: This agreement ("Agreement") shall not be binding upon **ConAgra Foods Food Ingredients Company, Inc. dba J.M. Swank Company** ("Seller") until signed by an authorized representative of Seller. All deliveries of goods described on the face hereof and any addendum hereto (the "Goods") by Seller to Buyer shall be delivered and accepted upon the terms and conditions set forth in this Agreement.

Extension of Credit: 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 to any attorney who is not a salaried employee of Seller, 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, any contract, invoice, or otherwise 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.

Installment 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.

Pro-Rata Delivery: 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.

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.

Shipping/Delivery: Unless definite shipping dates appear on the face hereof, Buyer shall furnish shipping instructions to Seller in ample time for Seller to execute delivery as requested and in a manner that will generally reduce the quantity of Goods described on the face hereof uniformly over the term of this Agreement. Seller reserves the right to cancel, based on unordered material, up to the following percentages of the total contracted pounds: 25% through the first quarter of the term, 50% through the second quarter, 75% through the third quarter. Seller also reserves the right to limit the quantity shipped per quarter to 25% of the total quantity purchased under this Agreement. Unless otherwise specifically stated in writing, materials will be shipped by any public carrier that Seller deems satisfactory. Delivery is not guaranteed to the destination, and claims for shortages or damages in transit must be made by Buyer to the carrier before the Goods are unloaded. Time of delivery is not the essence of this transaction unless specifically noted in writing. Acceptance by Buyer of any Goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such Goods.

Price: In the event Seller is required to pay fees, demurrage, or costs with respect to the shipping of the Goods sold herein, Buyer hereby agrees to pay all such fees, demurrage, and other costs, including any subsequent undercharge claims, and to indemnify and hold Seller harmless from any claims for payment of any such fees, demurrage, or other costs. Orders requested by Buyer but not described in this Agreement may be filled, at Seller's sole discretion, according to Seller's standard price list, until a purchase contract is executed by both parties.

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.

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.**

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 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 ConAgra Foods, Inc., 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.

Claims: ANY CLAIM FOR DAMAGES AS A RESULT OF THE RECEIPT OF DEFECTIVE OR OTHERWISE NON-CONFORMING GOODS UNDER THIS AGREEMENT MUST BE MADE BY BUYER THROUGH WRITTEN NOTICE TO SELLER WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF SHIPMENT OF THE GOODS BY BUYER, DESCRIBING THE SPECIFIC DEFECT OR CLAIM ALLEGED. FAILURE TO PROVIDE SUCH WRITTEN NOTICE WITHIN THIS TIME PERIOD SHALL BE DEEMED A WAIVER AND RELEASE OF ANY SUCH CLAIM OR RIGHT OF RECOVERY BY BUYER WITH RESPECT TO ANY SUCH DEFECTIVE OR NON-CONFORMING GOODS. SELLER'S LIABILITY FOR ANY AND ALL DAMAGES, ACTIONS OR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF SUCH CLAIMS, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH A CLAIM IS MADE. SELLER SHALL NOT BE LIABLE FOR LOST PROFITS OR FOR INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.

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, as stated on the front side 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 materials grown, produced, or purchased by Seller uniquely for the production of the Goods for Buyer including, but not limited to, packaging materials.

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.