



## PET FOOD SOLUTIONS TERMS AND CONDITIONS OF SALE

1. **Terms and Conditions.** These terms and conditions of sale (“**Terms**”) are the only terms which govern the sale of the refined animal fats and related products (“**Product**”) by Pet Food Solutions LLC, an Illinois limited liability company (“**Seller**”), to the buyer (“**Buyer**”) identified in the Sales Confirmation. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Product covered hereby, the terms and conditions of such contract shall control only if, and to the extent that, they contradict these Terms. Any quotation, confirmation of sale, invoice or other sales document accompanying these Terms (each a “**Sales Confirmation**”, together with these Terms, collectively, the “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms control over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
2. **Delivery and Shipping.**
  - (a) The Product will be delivered at the time set forth on the applicable Sales Confirmation. Unless otherwise agreed in writing by the parties, Seller shall deliver the Product F.O.B. Seller's facility, Clinton, Indiana, or such other location identified in the Sales Confirmation (the “**Delivery Point**”), with Buyer responsible for making arrangements for, providing labor and equipment for receipt of the Product at the Delivery Point, and for the costs of shipping the Product. Seller may, in its sole discretion, without liability or penalty, make partial deliveries of Product. Each delivery will constitute a separate sale, and Buyer shall pay for the Product delivered, whether in whole or partial fulfillment of Buyer's purchase order. If agreed to by Seller in the Sales Confirmation, Seller will arrange for the shipment of the Product to Buyer using third party transportation services at rates established by Seller.
  - (b) If for any reason Buyer fails to accept delivery of any of the Product on the date fixed pursuant to Seller's notice that the Product has been delivered at the Delivery Point, or if Seller is unable to deliver the Product at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) the Product shall be deemed to have been delivered; and (ii) Seller, at its option, may store the Product until Buyer or a shipper picks up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). If Buyer is unable to unload or otherwise accept a shipment (or any part thereof) at Buyer's designated location, Buyer will be responsible for, and Seller may invoice Buyer for, any detention, storage or similar fees imposed by the shipper.
3. **Quantity.** Seller's weights and measures shall govern, except in case of proven error. If Seller delivers to Buyer a quantity of Product of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Product or any portion by reason of the surplus or shortfall and shall pay for such Product the price set forth in the Sales Confirmation adjusted pro rata.
4. **Shipping Terms.** Delivery shall be made FOB, Delivery Point.
5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Product at the Delivery Point.
6. **Security Interest.** As collateral security for the payment of the purchase price of the Product, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in the Product, wherever located and whenever acquired, as well as all proceeds thereof (including insurance proceeds). The security interest granted under this provision constitutes a purchase money security interest under the Illinois Uniform Commercial Code.
7. **Inspection and Rejection of Nonconforming Product.**
  - (a) Buyer shall inspect the Product upon receipt of Product at Buyer's facility. Buyer will be deemed to have accepted the Product unless it notifies Seller in writing of any Nonconforming Product upon the earlier of (i) the loading of the Product into Buyer's tanks or other containers, and (ii) two (2) business days after Buyer's receipt of the Product, and furnishes such written evidence or other documentation as reasonably required by Seller. “**Nonconforming Product**” means only the following: (i) Product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
  - (b) If Buyer timely notifies Seller of any Nonconforming Product, Seller shall, in its sole discretion, (i) replace such Nonconforming Product with conforming Product, or (ii) credit or refund the Price for such Nonconforming Product, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to replace Nonconforming Product, Seller shall, after receiving Buyer's shipment of Nonconforming Product, ship to Buyer, at Buyer's expense and risk of loss, the replaced Product to the Delivery Point at a reasonable time determined by Seller in its sole discretion.
8. **Price.**
  - (a) Buyer shall purchase the Product from Seller at the prices (the “**Prices**”) as set forth on the Sales Confirmation. The Prices set forth thereon may include a premium for a refined chicken fat product with higher anti-oxidant levels measured by PPM. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes.
  - (b) The price of Seller's refined animal fat product as set forth in the Sales Confirmation is based in part on the market price of poultry fat, measured by the Mid-South Stabilized/Poultry Fat Index as reported by The Jacobsen (the “**Base Poultry Fat Price**”).
  - (c) In the case of an Agreement for a single shipment of Product, if delivery is requested for more than 7 days after the Seller quotes a price for the Product, the Seller, at its sole discretion, may adjust the price per LB to reflect the Base Poultry Fat Price on the date of delivery.
  - (d) In the case of an Agreement contemplating multiple shipments, Seller may adjust its price for Product upon 7 days written notice, as follows: (i) if at any time the average Base Poultry Fat Price during a calendar quarter increases or decreases by more than \$0.01 from the average Base Poultry Fat Price during the previous calendar quarter, the price per LB of the Product shall be increased or decreased to reflect the change in the Base Poultry Fat Price; and (ii) if the Seller's costs of production otherwise materially increase for any reason, such increased costs may be passed on to Buyer and the price per LB of the Product increased to reflect such increased costs of production. If the Base Poultry Fat Price changes 10% or more since the previous agreed Base Poultry Fat Price, an adjustment to the Base Poultry Fat Price will be made immediately and will be applicable to all shipments made after the effective date of notice until a subsequent quarterly price adjustment is made.
9. **Payment Terms.**
  - (a) Buyer shall pay all invoiced amounts due to Seller net 7 days of Seller's receipt of the Product, with all payments credited to Buyer upon receipt by Seller. Payments by wire transfer, ACH or other electronic form of payment are deemed made upon receipt of the funds in Seller's account. Accordingly, electronic funds transfers should be submitted early enough on a business day in order to be processed and funds received by Seller in order for Buyer to be credited with payment on that date.
  - (b) Seller shall be entitled to 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. In addition Seller is entitled to recover from Buyer all costs incurred in collecting late payments, including, without limitation, attorneys' fees.
  - (c) In addition to the foregoing, (i) if Buyer fails to pay any amounts when due hereunder and such failure continues for five days following written notice to Buyer of such failure to pay, Seller shall be entitled to suspend the delivery of Product; and (ii) if in Seller's sole discretion, Buyer's creditworthiness is reasonably in doubt, Seller shall be entitled to require either (A) full or partial cash payment in advance of shipment, or (B) written assurances regarding Buyer's financial condition that Seller considers satisfactory in its sole discretion.
  - (d) Buyer is not entitled to withhold payment of any amounts otherwise due and payable hereunder for Product delivered or to be delivered to Buyer, by reason of any Buyer alleged right of set-off, claim or dispute with Seller.
10. **Limited Warranty; Exclusive Remedies.**
  - (a) SELLER'S SOLE AND EXCLUSIVE WARRANTY IS THAT AT THE TIME OF DELIVERY, THE PRODUCT CONFORMS WITH THE SPECIFICATIONS (INCLUDING, IF APPLICABLE, PARTICULAR ANTI-OXIDANT LEVELS) FURNISHED TO BUYER BY SELLER WITH RESPECT TO THE PRODUCT. SUCH WARRANTY EXPIRES AS TO ANY SHIPMENT AT THE EARLIER OF THE EXPIRATION OF SEVEN (7) CALENDAR DAYS AFTER BUYER'S RECEIPT THEREOF OR USE OR INCORPORATION OF PRODUCT BY BUYER.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCT (WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE), INCLUDING WITHOUT LIMITATION, ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE, (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; OR (v) WARRANTY OF WHOLESOMENESS.

(c) The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) if: (i) Buyer makes any further use of such Product after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage or use of the Product; or (iii) Buyer alters the Product without the prior written consent of Seller.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five business days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Product and Buyer (if requested to do so by Seller) returns such Product to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Product is defective. Buyer agrees that any analysis of Product in respect of such warranty shall be performed using only the same analyzing methods as used by Seller (for FFA and MIU content, color and solids) or any independent testing organization engaged by Seller (to determine peroxide values and salmonella negative status).

(e) SUBJECT TO SECTION 10(b), SECTION 10(c), AND SECTION 10(d) ABOVE, THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A) WITH RESPECT TO ANY SUCH PRODUCT DURING THE WARRANTY PERIOD, SHALL BE, IN SELLER'S SOLE DISCRETION, EITHER: (I) REPLACE THE PRODUCT (OR THE DEFECTIVE PORTION THEREOF), OR (II) CREDIT OR REFUND THE PRICE OF SUCH PRODUCT AT THE PRO RATA CONTRACT RATE PROVIDED THAT, IF SELLER SO REQUESTS, BUYER SHALL, AT SELLER'S EXPENSE, RETURN SUCH PRODUCT TO SELLER.

11. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, 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.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR ANY SHIPMENT OF PRODUCT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID TO SELLER FOR THE APPLICABLE SHIPMENT OF PRODUCT.

12. Packaging; Uses; Safe Handling. Buyer shall be fully responsible for, and assumes full responsibility for, any and all liability arising out of the unloading, discharge, storage, handling, use and disposal of Product or containers. Buyer acknowledges receipt of Seller's Material Safety Data Sheet. Buyer shall promptly and carefully inspect all deliveries of Product upon receipt and will maintain appropriate safe handling procedures with respect to Product. Buyer shall use its best efforts to prevent contamination of the Product. Buyer represents, warrants and covenants to Seller that the Product will not be used, resold, or combined for end uses intended or reasonably likely to be toxic or lethal to human beings or animals.

13. Insurance. During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability and for products liability, product recall, spoilage, and other coverages and in amounts not less than set forth on Seller's insurance delivered to Buyer in connection with these Terms, provided that the carriers are financially sound and reputable insurers that have an AM Best rating of B++ or better. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

14. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications and samples, 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 performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's written request, Buyer shall promptly return all such confidential information received from Seller.

15. Compliance with Law. Each party shall comply with all applicable laws, regulations and ordinances with respect to this Agreement, and the manufacture, sale, purchase, use, and resale of the Product. Each party shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. The Products are subject to U.S. export control laws. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person not authorized by U.S. law without first obtaining approval from the U.S. government or as otherwise authorized by U.S. law and regulations. In addition, Buyer represents and warrants to Seller that Buyer is in compliance with, and Buyer indemnifies and hold harmless Seller for any failure of Buyer to comply with, the export and import laws of any countries involved in the use or resale of the Product by Buyer outside the U.S.

16. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate the Agreement, effective upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Agreement and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Termination of the Agreement or the cancellation of any shipment thereunder shall not relieve Buyer of any obligation existing prior to or as of the date of such termination or cancellation.

17. Amendment and Waiver. These Terms may only be amended or modified in a writing which is signed by an authorized representative of each party. No waiver of any provision of the Agreement or these terms is effective unless set forth in writing and signed by the waiving party. No failure to exercise, or delay in exercising, any right, remedy, power or privilege operates, or may be construed, as a waiver thereof. No single or partial waiver of any right, remedy, power or privilege precludes any other or further exercise thereof, or the exercise of any other right, remedy, power or privilege.

18. Force Majeure. The Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling any term or condition or performing any obligation when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God; flood; fire; earthquake; explosion; governmental actions, directives, or orders; war, invasion or hostilities; terrorist threats or acts; insurrection, riot or other civil unrest; national or state emergency; epidemics (affecting person, poultry or other animals); labor disputes; common carrier delays, the inability to obtain raw materials due to shortages or otherwise; power outages; and changes in law, regulations, rules or industry standards.

19. Assignment. Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. The foregoing notwithstanding, either party may assign this Agreement to a person or entity, including, without limitation, any of such party's affiliates, in connection with sale or transfer of all or substantially all of the party's business or assets (by merger, sale of equity, sale of assets, or otherwise).

20. Governing Law; Jurisdiction. This Agreement and each of these Terms shall be construed in accordance with, the internal laws of the State of Illinois without giving effect to its choice or law rules. The exclusive jurisdiction for all legal proceedings arising out of or relating to the Agreement or these Terms, shall be the federal courts or the state courts located in the State of Illinois, in each case in any city or county where venue is proper, and each party irrevocably submits to the exclusive jurisdiction and venue of such courts.

21. Notices. All notices, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the receiving party at the address set forth on the face of the sales document for the transaction or contract which incorporates these Terms, or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by (i) personal delivery, (ii) nationally recognized overnight courier, (iii) by e-mail (if followed by overnight courier), (iv) or certified or registered mail. Notice is effective upon delivery if the party giving the Notice has complied with the requirements of this section; otherwise notice is effective upon receipt confirmed or acknowledged.

22. Severability. If any provision of the Agreement is held invalid, illegal or unenforceable for any reason, the provision should be severed from the Agreement, without affecting the validity, legality and enforceability of the remaining provisions of the Agreement.

23. Survival. Any of these Terms or any other provisions of the Agreement which by their nature should apply beyond the term of the Agreement, will remain in full force and effect and survive any termination or expiration of the Agreement.