

## TERMS & CONDITIONS OF PURCHASE

THESE TERMS AND CONDITIONS (“**TERMS**”) APPLY TO ALL PURCHASE ORDERS (EACH AN “**ORDER**”) TO PURCHASE GOODS AND/OR INCIDENTAL SERVICES (COLLECTIVELY, “**PRODUCTS**”) ISSUED BY MARK FOODS, INC. (“**MARK FOODS**”) OR ANY DIVISION, SUBSIDIARY, OR AFFILIATE OF MARK FOODS (EACH AN “**AFFILIATE**”) TO ANY SUPPLIER OF THE PRODUCTS (EACH A “**SUPPLIER**”). THE TERM “**BUYER**” REFERS TO MARK FOODS OR THE SPECIFIC MARK FOODS AFFILIATE NAMED IN THE ORDER.

PURCHASE OF ANY PRODUCTS BY BUYER FROM SUPPLIER IS EXPRESSLY CONDITIONED ON SUPPLIER’S ASSENT TO THESE TERMS. BY ACCEPTING ANY ORDER, RECEIVING ANY PAYMENT, OR SHIPPING ALL OR ANY PORTION OF THE PRODUCTS, SUPPLIER AGREES TO BE BOUND BY AND ACCEPT THESE TERMS UNLESS BUYER AND SUPPLIER HAVE ENTERED INTO A SEPARATE AGREEMENT GOVERNING THE SALE OF THE PRODUCTS BY SUPPLIER TO BUYER THAT IS SIGNED BY BOTH BUYER AND SUPPLIER.

MARK FOODS MAY, FROM TIME TO TIME, AND IN ITS SOLE DISCRETION, REVISE THESE TERMS WITHOUT NOTICE BY POSTING THE REVISED TERMS ON ITS WEBSITE ([WWW.MARKFOODS.COM](http://WWW.MARKFOODS.COM)) (THE “**WEBSITE**”). THE TERMS POSTED ON THE WEBSITE AT THE TIME THAT SUPPLIER ACCEPTS ANY ORDER WILL GOVERN THAT ORDER.

**1. Offer and Acceptance.** Each Order constitutes a separate offer to purchase Products on the terms and conditions set forth in the Order. Supplier’s written confirmation or acknowledgement (including e-mail), receipt of any payment, commencement of any work, or shipment of all or any portion of Products in connection with an Order, whichever occurs first, shall be deemed acceptance of Buyer’s offer. All Orders incorporate these Terms whether or not these Terms are separately referenced in the Order. Acceptance of the Order shall therefore also constitute acceptance of these Terms. The accepted Order shall govern the transaction between Buyer and Supplier. If any Order is deemed to be an acceptance of a prior offer by Supplier, then such acceptance shall be limited to these Terms. Any terms included in Supplier’s quote, bid, proposal, invoice, statement, published rate schedule, or other memoranda or attachment of any nature whatsoever, whether written or oral, shall not govern the transaction between Buyer and Supplier and are void. Additional or different terms proposed by Supplier, or any other attempt by Supplier to vary these Terms, shall constitute a counteroffer by Supplier, which counteroffer is rejected by Buyer.

**2. Delivery.** Delivery of all Products shall be strictly in accordance with the terms set forth on the Order and if no delivery term is provided, delivery will be CIF with customs and any FDA holds cleared (Incoterms 2020). Risk of loss will transfer pursuant to Incoterms 2020 for the applicable delivery term. Title will transfer at the final destination identified in the Order or otherwise mutually agreed by Buyer and Supplier. Supplier shall immediately report any delivery delays to Buyer but such report shall not operate as a waiver of any of Buyer’s rights in connection with the Order. Supplier shall take all reasonable steps to avoid or end delays and shall be solely responsible for any costs related to such efforts.

**3. Packing.** All Products shall be suitably packed, marked, and shipped by Supplier in accordance with industry standards and practices unless otherwise specified in the Order. No packing or cartage charges shall be allowed, except as set forth in the Order.

**4. Payment.** The price of the Products is the price stated in the Order (the “**Price**”) and, unless otherwise stated in the Order, the Price is in U.S. Dollars. Supplier shall pay or cause to be paid all sales, value added, use, or other taxes, fees, or charges imposed by any government authority on or with respect to the Products. Supplier shall submit invoices to Buyer and, unless otherwise stated on the Order, all payment terms are Net 30

from the later of (i) the date Buyer receives the invoice, or (ii) the date Buyer takes delivery of the Products. All of Supplier’s invoices shall be directed to the address specified on the Order, reference the Order number, and be accompanied by documentation supporting the amounts invoiced, including, without limitation, a bill of lading. No payment shall constitute final acceptance of Products nor shall it waive any of Buyer’s rights and remedies.

**5. Rejection.** Buyer, at its option and in its sole discretion, may reject or revoke acceptance and either return to Supplier or hold at Supplier’s risk and expense any Products that: (a) do not conform to these Terms; (b) do not conform to industry standards and practices for similar Products; (c) do not conform to all Specifications; (d) violate any Applicable Law (as defined below); or (e) fail to comply with any applicable customs requirements. Supplier shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping, returning, and any customs actions regarding any Products rejected (or the acceptance of which is revoked) by Buyer. Buyer’s right to reject or revoke acceptance and to return or hold Products shall extend to Products returned by customers of Buyer for any of the reasons stated in this section.

**6. Representations and Warranties.** Supplier represents, guarantees, and warrants each of the following to Buyer:

- a. Supplier is, and shall remain, in compliance with, and all Products were caught processed, and sold in compliance with, all applicable U.S. and country of harvest and processing laws, rules, ordinances, codes, and orders and decrees of any governmental authority affecting the Order or Products (collectively, “**Applicable Law**”), including, without limitation: (i) the Hazard Analysis Critical Control Point regulations for Fish & Fishery Products, 21 C.F.R. Part 123; (ii) the U.S. Food and Drug Administration (“**FDA**”) Fish and Fishery Products Hazard Guidance - 4<sup>th</sup> Edition; (iii) the U.S. Federal Food, Drug and Cosmetic Act, as amended including by FSMA, and the regulations adopted thereunder (“**Act**”); (iv) the Fair Packaging and Labeling Act, as amended, and any regulations adopted thereunder; (v) the Federal Consumer Product Safety Improvement Act and any additional requirements imposed thereunder; (vi) the Bioterrorism Act of 2002, as amended, and any regulations adopted thereunder; (vii) the Lacey Act, 16 U.S.C. § 3371 et. seq.; (viii) any laws, rules or regulations imposed by National Oceanic and Atmospheric Administration including related to import regulation; and

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- (ix) any seasonal or permanent prohibition on the sale of the species, minimum or maximum size restrictions for the species, permit, reporting, documentation, marking or labeling requirements.
- b. The Products: (i) conform to (A) any documentation provided by Supplier with the Product (including any Catch Certificate and Certificate of Analysis), (B) industry standards and practices for similar products, and (C) applicable specifications and other requirements specified by Buyer in the Order or otherwise ("**Specifications**"); (ii) are free from defects, merchantable and fit for their intended purpose; (iii) are, and are procured, produced, processed and sold, in compliance with good manufacturing practices and Applicable Law; (iv) are not adulterated or misbranded within the meaning of the Act, (v) do not contain any of the chemicals known to the State of California to cause cancer or reproductive toxicity unless a chemical is present at levels below the safe harbor levels established by, and is not required to have any warning or other disclosure in accordance with, California's Safe Drinking Water and Toxic Enforcement Act of 1986, as amended (sometimes referred to as Proposition 65); and (vi) do not contain and were not prepared with the addition of any chemical preservative, color or food additive, pesticide residue, or other substance harmful to human health and are free from contaminants, glass, metal, dirt, grease, and other extraneous material.
- c. The Products and any and all goods and materials used by Supplier in Products sold to Buyer, including, without limitation, raw materials and intermediate/semi-processed products (collectively, "**Ingredients**"), were at all times stored and transported under conditions necessary to protect Product integrity. Without limiting the generality of the foregoing, refrigerated Products and Ingredients were at all times stored at temperatures less than 36° Fahrenheit (2.2° Celsius), and frozen Products and Ingredients were at all times stored at temperatures less than -4° Fahrenheit (-20° Celsius);
- d. Supplier has, and will continue to have, sufficiently tested, suitable, and reliable Product safety and quality assurance programs, including a process to effectively and efficiently address recalls, as well as a food defense system that effectively and materially addresses intentional acts of contamination and/or terrorism;
- e. Supplier has obtained all permits, licenses, and approvals necessary to manufacture and/or supply the Product;
- f. Supplier complies with all human rights laws, including, without limitation, prohibitions on child labor, slavery, and human trafficking, in the countries in which it does business, and the producers or providers of any Ingredients comply with all human rights laws in the countries in which they do business;
- g. Supplier complies with all environmental laws and regulations in the countries in which it does business, and the producers and providers of any Ingredients comply with all environmental laws in the countries in which they do business;
- h. Supplier does not engage in any illegal, unreported, or unregulated ("**IUU**") fishing or harvesting, and the producers

or providers of any Ingredients do not engage in IUU fishing or harvesting; and

- i. Supplier has and shall transfer good title to the Products to Buyer free and clear of any liens, adverse claims, or other encumbrances.

The above representations and warranties made by Supplier are in addition to, and shall not be construed as restricting or limiting any warranties of Supplier, express or implied, which are otherwise provided by law.

**7. Insurance.** Supplier shall obtain and maintain throughout the term of the Order, at Supplier's sole expense, insurance coverage of the types and limits described below in U.S. dollars. Limits may be satisfied through any combination of primary and umbrella policies.

- a. Commercial General Liability insurance with a combined single limit of \$5,000,000 per occurrence and coverage for all liability associated with the Order, including, without limitation, bodily injury or property damage, personal injury, products, completed operations, sudden and accidental pollution, and Supplier's indemnity obligations;
- b. Product recall insurance liability insurance with a limit of \$5,000,000 per occurrence;
- c. If Supplier's employees or agents will drive on Buyer's property and/or premises, or make deliveries to Buyer's property and/or premises, Business Auto Liability insurance complying with the requirements of all regulatory bodies having jurisdiction, or a combined single limit of \$1,000,000 per occurrence for bodily injury or property damage, whichever is greater, including coverage for all vehicles used in the performance of any services related to the Order, whether owned, non-owned, or hired; and
- d. Workers Compensation insurance complying with the laws having jurisdiction over each employee, and Employer's Liability (if applicable) with limits of not less than \$1,000,000 per occurrence.

In each of the above described policies, Supplier shall waive, and shall require its insurers to waive, any rights of subrogation or recovery they may have against a Buyer (including Mark Foods and/or its Affiliates). Under the policies described in (a), (b) and (c) above, Mark Foods and its Affiliates shall be named as additional insureds. Such policies shall be primary insurance with respect to Mark Foods and its Affiliates, and any other insurance maintained by Mark Foods and/or its Affiliates shall be excess and not contributory with this insurance. Non-renewal or cancellation of the policies described above shall be effective only after written notice is received by Buyer 30 days in advance of any such non-renewal or cancellation. Supplier shall deliver to Buyer certificates of insurance evidencing the existence of all insurance required above. If the insurance policies described in this section are not obtained and maintained as provided, then Buyer, in its sole discretion, shall have the right to immediately terminate the Order or to suspend delivery of the Products until such time as the obligations of this section are satisfied without any liability to Supplier whatsoever.

**8. Indemnification.** Supplier shall defend, indemnify, and hold harmless Mark Foods, its Affiliates and each of their respective directors, officers, employees, and agents, from and against all loss, damage, action, judgment, award, penalty, fine, cost, expense, claim, or other liability of any kind whatsoever

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(including attorneys' fees), actual or alleged, caused by, arising out of, or resulting from: (a) Supplier's failure to comply with Supplier's obligations under, or breach of, the Order (including these Terms); (b) acts, omissions or negligence of Supplier or its employees, subcontractors, or agents in the performance of the Order or at the premises owned or controlled by Buyer; (c) defects in the Products; (d) breach of any warranty, express or implied, in connection with Products; (e) failure to provide adequate warnings, labeling, or instructions related to the Products; (f) the existence of contaminants or other foreign materials in Products at levels exceeding permissible limits under Applicable Law (as defined below); or (g) Supplier's failure to comply with any Applicable Law or regulation.

**9. Imported Products.** If applicable, Supplier shall comply with all import and sanctions laws, regulations, orders, and authorizations applicable to the import and delivery of Products from outside the United States ("**Imported Products**") to Buyer. Supplier shall further comply with each of the following requirements:

- a. Country of Origin. All Imported Products must be clearly marked with the country of origin. Country of origin markings must be conspicuous, legible, and permanent, and must include the English name of the country from which the Imported Products originate.
- b. Import Records. Supplier shall not list Buyer, Mark Foods, or its Affiliates as either "Importer of Record" or "Consignee" on any import disclosures, customs declarations, or other similar documents without Buyer's prior written consent. Absent such prior written consent, Supplier or its designee shall serve as the U.S. importer for all Imported Products and shall be responsible for all import authorizations required to fulfill Supplier's obligations in connection with the Order. More specifically, Supplier or its designee shall be responsible for all aspects of importation and delivery of Imported Products to Buyer in the United States, including, without limitation: (i) customs and regulatory clearances; (ii) payment of tariffs, duties, customs, fees, expenses, and other charges; and (iii) keeping records, documents, correspondence, and tracking information required under Applicable Law.
- c. Shipping Information. Supplier shall provide to Buyer in connection with each shipment of Imported Products: (i) a packing list detailing the contents of the entire shipment; (ii) a copy of Supplier's commercial invoice; and (iii) a copy of the bill of lading.
- d. Ocean Containers. If Imported Products will be shipped via ocean transport vessel destined to arrive within the limits of a port in the United States, then Supplier shall: (i) ensure that all Importer Security Filing (ISF) data elements are prominently included on the associated commercial invoice; and (ii) provide the commercial invoice, packing list, bill of lading, and anticipated vessel loading date to Buyer no later than 72 hours before loading Imported Products aboard the vessel.
- e. Trade Agreements. Supplier shall provide to Buyer any additional documentation necessary to support applicable duty free, special tariff, or free trade agreements that may apply to the Order before shipping Imported Products to the United States. Such additional documentation may include, without limitation: (i) North American Free Trade Act

(NAFTA) certificates of origin; (ii) Generalized System of Preferences (GSP declarations); (iii) Chilean Free Trade Act (CFTA) declarations; and (iv) Australian Free Trade Act (AFTA) declarations. The facts included in such documentation shall be verified by Supplier and signed by an official with direct knowledge of the information.

**10. Product Testing; Delivery Requirements.** Supplier shall conduct microbiological and/or chemical testing to confirm that all Products meet or exceed regulatory standards and will provide documentation to Buyer in the form of a certificate of analysis showing all test results. Supplier will also provide a Catch Certificate showing details of the Product including where caught and type of fish. Fish and fishery Products must meet or exceed standards set forth in "FDA and EPA Safety Levels in Regulations and Guidance," available at: <https://www.fda.gov/media/80400/download>. The outer carton of all Products must be labeled with the following at a minimum: Name and address of shipper; Species market name or names; Country of Origin; Method of harvest (wild caught or farmed raised); Net weight and in compliance with FDA requirements. Each package and carton must contain species product names that conform to the market names in the "The Seafood List" of the FDA. Supplier will deliver a HACCP compliance certification/guarantee from shipper or government agency for each delivery of Product. Supplier is responsible for clearing all customs and FDA holds prior to delivery to Buyer.

**11. Recalls.** If any Products, because of a condition that exists at the time of delivery to Buyer or that results from such condition, are the subject of a recall or safety notice initiated by Supplier, Buyer, or any government or consumer protection agency, Supplier shall be responsible for all costs and expenses associated with the recall or notice and shall reimburse Buyer, Mark Foods, and its Affiliates for all reasonable costs incurred in recalling, publishing notices about, shipping and/or destroying such Products (including, without limitation, any products with which such Products were packaged, consolidated, or commingled) at Buyer's net landed cost therefor, including refunds to customers. Upon learning or receiving notice of a credible claim or potential claim of a defect in, or tampering with, any Products, Supplier shall promptly notify Mark Foods and, if appropriate, contact the FDA and/or other appropriate government agency, and shall immediately conduct at its expense sufficient analyses of such Products to reliably determine the accuracy of such claim and the cause of any such defect or tampering. Buyer and Supplier shall assist each other in all reasonable ways to resolve any claims involving Products subject to a recall or safety notice.

**12. Supplier Audits.** Buyer shall have the right to inspect and audit at all reasonable times Supplier's accounts and records pertaining to the Products and Supplier's performance under and compliance with the Order. Such right shall continue for a period of 24 months following the delivery of the Products to Buyer. Supplier is obligated to retain such accounts and records for at least 24 months following delivery and acceptance of the Products by Buyer. Buyer shall similarly have the right to conduct on-site inspections and audits of Supplier's warehouses, processing facilities, transportation vehicles or any other location where Product is processed or stored. Supplier shall cooperate as necessary to accommodate such inspections.

**13. Termination for Convenience.** Buyer reserves the right to cancel any Order, in whole or in part, for its own convenience

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without cause at any time by giving Supplier written notice of such cancellation. Upon receipt of any such notice, Supplier shall: (a) immediately stop performance to the extent set forth in the notice, (b) cancel any orders or subcontracts pertaining to the Order to the extent set forth in the notice, (c) preserve and protect any goods or materials purchased for or committed to the Order pending Buyer's instructions, (d) comply with Buyer's directions to terminate the delivery of Products, and (e) promptly use commercially reasonable efforts to minimize the amount of any third party termination charges associated with any such cancellation. Buyer shall pay for Supplier's performance under the Order satisfactorily completed as of the date of receipt of Buyer's notice of cancellation, as substantiated by documentation satisfactory to and verified by Buyer, together with any third party termination charges (the "**Cancellation Payment**"). Under no circumstances shall Supplier be entitled to any prospective profits or damages because of such Buyer cancellation. The Cancellation Payment shall not exceed the Price that would otherwise be payable to Supplier under the Order. Buyer shall not have any liability whatsoever related to cancellation of the Order beyond the Cancellation Payment.

**14. Termination for Cause.** Supplier shall be in default if Supplier: (i) breaches any provision of the Order or these Terms and fails to cure such breach within 30 days following Supplier's receipt of notice from Buyer advising of the breach; (ii) makes an assignment for the benefit of creditors or consents to or acquiesces to the appointment of a receiver, liquidator, fiscal agent, or trustee; or (iii) becomes insolvent or enters into a voluntary or involuntary bankruptcy or receivership (singularly and collectively, a "**Default**"). If Supplier is in Default, Buyer may, in its sole discretion, avail itself to any or all of the following remedies: (a) elect not to pay Supplier any amounts due for the purpose of setoff against and to the extent of Buyer's damages caused by Supplier's Default; (b) terminate or suspend Supplier's performance under the Order, in whole or in part, effective immediately upon Supplier's receipt of Buyer's notice of termination/suspension; or (c) pursue and enforce any and all other rights or remedies available to Buyer at law or equity.

**15. Traceability.** Supplier shall comply with all Mark Foods' date coding protocols in effect as of the date of the Order. No other date coding may be used without prior written agreement signed by an authorized representative of Mark Foods. All master case and bag labels and templates must be reviewed and approved by Mark Foods' Quality Assurance department.

**16. English Language.** All correspondence, invoices, statements, notices, and other documents associated with Products and/or the Order shall be in English. In the event of a dispute regarding the Order, the English language shall govern the interpretation and meaning of these Terms.

**17. Assignment.** Supplier may not assign any of its rights or obligations under the Order and/or Terms without Buyer's prior written consent. Any attempted assignment of such rights or obligations without Buyer's prior written consent shall be void. These Terms shall apply to and bind the successors and permitted assigns of the parties.

**18. Confidentiality.** All non-public, confidential or proprietary information of Buyer, including, but not limited to, trade secrets, recipes, technology, specifications, documents, prototype Products, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and

marketing (collectively, "**Confidential Information**"), disclosed by Buyer to Supplier, 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," is confidential, and shall not be disclosed or copied by Supplier without the prior written consent of Buyer. Supplier shall promptly return to Buyer all Confidential Information upon Buyer's written request.

**19. Force Majeure.** Buyer shall not be responsible for, and no liability shall result to Buyer in connection with, any delays in performance of this Agreement that result from any circumstances beyond Buyer's immediate control, including, without limitation, carrier delays, foreign or domestic embargoes, seizures, pandemic, epidemic, acts of God, insurrections, wars, adoption or enactment of any governmental laws, ordinances, regulations or restrictions, fires, floods, explosions, strikes, extraordinary currency devaluations, taxes or custom duties, or any other similar events or contingencies.

**20. Governing Law and Venue.** These Terms, and any dispute arising hereunder, shall be construed and enforced according to the laws of the State of New York notwithstanding any conflict-of-law principle that might implicate the laws of any other jurisdiction governing the same. The United Nations Convention for the International Sale of Goods shall not apply to these Terms or any Order. Venue for legal proceedings of any nature whatsoever relating to or otherwise involving an Order and/or these Terms shall be New York, New York. Supplier consents and submits to the jurisdiction of any state or federal court located in the State of New York. In addition to other remedies, the prevailing party shall be entitled to recover such amount as the court may adjudge reasonable as attorneys' fees and expenses in the enforcement action or any appeal.

**21. Entire Agreement.** These Terms constitute the entire agreement between Buyer and Supplier pertaining to the Order and Products, and supersede any prior or contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, except as specifically set forth herein.

**22. Notices.** Any notice, request, demand, or other communication required or permitted by this Agreement that is addressed (if to Buyer) to the Buyer's contact listed on the Order, with a copy to Mark Foods, Inc., Attn: CEO, 1115 Broadway #301, New York, NY 10010, or (if to Supplier) to the contact listed on the Order, will be deemed properly given (a) when actually delivered if delivered personally; or (b) if sent by certified mail, or overnight courier or express mail, return receipt requested, when the return receipt indicates delivery was made.

**23. Relationship.** Supplier is an independent contractor and no past relationships or course of dealings between Supplier and Buyer shall affect Supplier's status as an independent contractor. Any and all persons engaged by Supplier in connection with the Order shall be deemed to be Supplier's agents or employees and not Buyer's agents or employees. Neither Buyer nor Supplier shall have the right or authority to assume or create any obligation of any kind, express or implied, on behalf of the other.

**24. Set Off.** Buyer, Mark Foods, and/or its Affiliates shall have the right at all times to set off any amount owing to or from Supplier under the Order, or pursuant to any other agreement with Supplier.

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**25. Severability.** If any provision becomes or is found to be illegal, unenforceable, void, or voidable, then such clause or provision shall be modified to the extent necessary to make it legal and enforceable. If modification of such provision is not possible, then it shall be severed from the remainder of the Order and/or Terms so that the remainder may remain in full force and effect.

**26. Survival.** Any provisions of these Terms which by their nature are intended to survive termination, expiration, cancellation, or completion of an Order shall survive and continue as valid and enforceable obligations notwithstanding termination, expiration, cancellation, or completion of the Order.

**27. Time.** Time is of the essence with respect to any and all provisions which specify a deadline for performance.

**28. Waiver.** No waiver of any breach shall be deemed to be a waiver of any other or any subsequent breach, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided. The failure of either party to exercise or enforce any provision shall not constitute a waiver of the provision and shall not preclude or prejudice such party from later enforcing or exercising the same, or any other, provision.