

STANDARD TERMS & CONDITIONS OF SALE

THESE TERMS AND CONDITIONS (“**TERMS**”) APPLY TO ALL SALES (EACH A “**SALE**”) OF GOODS PROCESSED, SOLD AND/OR DISTRIBUTED (COLLECTIVELY, “**PRODUCTS**”) THROUGH OR BY MARK FOODS, INC. (“**MARK FOODS**”) OR ANY DIVISION, SUBSIDIARY, OR AFFILIATE OF MARK FOODS (EACH AN “**AFFILIATE**”) TO ANY PURCHASER OF THE PRODUCTS (EACH A “**CUSTOMER**”). THE TERM “**SELLER**” REFERS TO MARK FOODS OR THE SPECIFIC AFFILIATE THROUGH OR FROM WHICH CUSTOMER PURCHASES THE PRODUCTS AS NAMED IN THE INVOICE OR OTHER SIMILAR DOCUMENT ISSUED BY THE SELLER IN CONNECTION WITH THE SALE (AN “**INVOICE**”).

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) (THE “**WEBSITE**”). THE TERMS POSTED ON THE WEBSITE AT THE TIME SELLER ACCEPTS ANY ORDER GOVERN THAT ORDER.

1. Product Orders. Customer shall order all Products in accordance with Seller’s then current ordering procedures. If not otherwise specified, Customer may submit orders (each an “**Order**”) to Seller either orally or in writing (including e-mail and all forms of electronic communication (e.g. fax, instant message, SMS text, etc.)).

2. Offer and Acceptance. Each Order constitutes a separate offer to purchase Products. No Order shall be binding upon Seller until accepted. Seller’s written confirmation (including e-mail and all forms of electronic communication (e.g. fax, instant message, SMS text, etc.)), receipt of payment, commencement of work, or shipment of all or any portion of Products in connection with an Order, whichever occurs first, shall constitute acceptance of Customer’s Order. All Orders incorporate these Terms whether or not these Terms are separately referenced in the Order or Invoice. Placing an Order or accepting delivery of, retaining, or using all or any portion of Products sold by Seller shall constitute acceptance of these Terms. In the event of a conflict between any term or condition of an Order and these Terms, these Terms shall control unless expressly modified by separate agreement signed by both Customer and Seller. Any terms included in Customer’s Order, bid, proposal, statement, or other memoranda or attachment of any nature whatsoever, whether written or oral, shall not govern the transaction between Customer and are void.

3. Delivery. Unless otherwise mutually agreed in writing by Seller and Customer, delivery will be FOB Seller at the warehouse/freezer location designated in the Order for Sales within the United State and CIF with customs cleared (Incoterms 2020) to the Port indicated in the Order for Sales outside the United States. 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 Seller and Customer (the “**Delivery Point**”). Customer shall communicate any requested delivery dates for each Order to Seller in writing. If Seller notifies Customer that the Order is accepted, Seller will also indicate the date or dates on which Seller expects to deliver the Products. Seller will use its commercially reasonable efforts to fill accepted Orders on or before delivery dates requested by Customer or as are later communicated by Seller. Seller, however, shall not be liable for damages, losses, expenses, or other liabilities of any kind if Seller fails to meet a requested delivery date.

4. Price; Payment. The price of the Products will be the price indicated in the Invoice. Payment terms are as indicated on the Invoice or, if not indicated, are net 30 days from date of the earlier of (i) date of the Invoice, or (ii) date of delivery of the Products. Customer will pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law. Customer shall reimburse Seller for any costs of collection on any past due sums, including

court fees, out-of-pocket expenses, and attorneys’ fees, whether or not suit is commenced. Customer may not reduce any payment by any alleged discounts or other deductions without Seller’s prior written consent. Seller reserves the right to suspend, reduce, or cancel any Order, or change payment terms, if Customer fails to make any payment when due.

5. Inspection. Customer, at Customer’s expense, may inspect Product at the Delivery Point within 24 hours after delivery of fresh Products or within 72 hours after delivery of frozen Products (the “**Inspection Period**”). Customer may, within the Inspection Period, reject and either return to Seller or hold at Seller’s risk and expense any Products that: (a) do not conform to the Seller Guarantee; (b) do not conform to any Customer specifications submitted to Seller in writing in the Order; or (c) violate applicable law. Customer shall supply any documentation as to the non-conformity as Seller may request. If any Products are non-conforming, Customer has provided proper notice, and if the non-conformity was not caused by Customer or due to misuse or handling after Seller delivered the Product to Customer, Seller will, at Seller’s option, (i) replace the non-conforming Products at no additional charge to Customer, or (ii) reimburse Customer for amounts Customer paid for such non-conforming Products. Customer shall bear all expenses and risks of unpacking, examining, repacking, storing, holding and/or reshipping, and returning any non-conforming Products. Failure to notify Seller of any non-conformities or other problems within the Inspection Period shall: (a) constitute acceptance of the Products; (b) waive Customer’s rights and remedies in connection with the Products; and (c) relieve Seller of any further obligations in connection with the Products.

6. Seller Guarantee. Unless otherwise specified or agreed, Seller guarantees and warrants that, at the time of delivery to the Delivery Point, all Products will be of good quality, free from material defects, and safe for human consumption if properly cooked (the “**Seller Guarantee**”). THE FOREGOING WARRANTY IS EXCLUSIVE TO CUSTOMER AND IS IN LIEU OF ALL OTHER WARRANTIES AND COMPRISES SELLER’S SOLE AND ENTIRE WARRANTY TO CUSTOMER IN CONNECTION WITH THE PRODUCTS, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

7. Seller’s Indemnity. Seller agrees to indemnify, defend, and hold harmless Customer from and against any Claim caused by a material breach by Seller of the Seller Guarantee except to the extent caused by the negligence of Customer or its employees, agents or contractors. A “**Claim**” is any claim, loss, cost, liability, demand, action, suit, damage or expense arising from a physical injury, illness, or death of a third-party human consumer of Products within the regular chain of commerce. Seller must

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promptly notify Seller of any such actual or threatened Claim. Seller shall have the absolute right to defend, resolve, or otherwise handle any Claim which Seller is required to defend under this section in Seller's sole discretion with or without reservation of rights. In the event of a Claim, Customer shall provide Seller with all relevant information and shall fully cooperate with and assist Seller in resolving the Claim.

8. Customer's Indemnity. Customer, at its sole cost and expense, shall defend, indemnify, and hold harmless Mark Foods, its Affiliates and each of their respective directors, officers, employees, and agents, from and against all Claims, actual or alleged, caused by, arising out of, resulting from, or occurring in whole or in part in connection with: (a) Customer's breach of these Terms; (b) the negligent or more culpable act or omission of Customer or its employees, contractors or agents; and (c) any failure by Customer to comply with any applicable laws.

9. Labels; Customer IP. To the extent the Products contain any Customer-specific labels, Customer will provide all such labels ("**Labels**") to Seller for affixing onto Products and Customer is solely responsible for ensuring, and represents and warrants that the Labels comply with all applicable federal and state laws and regulations. Customer hereby grants to Seller a revocable, royalty-free, non-exclusive, non-transferable license to use its tradenames, trade dress, Label content, and copyrights that appear on the Product packaging and in Labels ("**Customer IP**") for the purpose of allowing Seller to perform its obligations under this Agreement.

10. Insurance. Customer shall obtain and maintain throughout the term of any Order, at Customer'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, product liability, completed operations, sudden and accidental pollution, and Customer's indemnity obligations;
- b. If Customer's employees or agents will drive on premises of Mark Foods or its Affiliates to pick up Products or take deliveries from Seller'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; and
- c. Workers Compensation insurance complying with the laws having jurisdiction over each employee, whether or not Customer is required by such laws to maintain such insurance, and Employer's Liability (if applicable) with limits of not less than \$1,000,000 per occurrence.

In each of the above described policies, Customer shall waive, and shall require its insurers to waive, any rights of subrogation or recovery they may have against Mark Foods or its Affiliates. Under the policies described in (a) and (b) 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 Seller 30 days in advance of any such non-renewal or cancellation. Customer shall deliver to Seller 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 Seller, 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 Seller whatsoever.

11. Limitation of Liability. IN NO EVENT WILL SELLER, MARK FOODS OR ITS AFFILIATES BE LIABLE FOR ANY INCIDENTAL, CONTINGENT, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR USAGE, COST OF SUBSTITUTE PRODUCTS, ADDITIONAL COSTS INCURRED BY CUSTOMER, OR CLAIMS OF THIRD PARTIES. THE TOTAL LIABILITY OR SELLER, MARK FOODS AND ITS AFFILIATES TO CUSTOMER FOR DAMAGE OR LOSS ARISING OUT OF, OR IN ANY WAY RELATED TO, THE SALE OF PRODUCTS, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR ANY OTHER CAUSE SHALL IN NO EVENT EXCEED THE PRICE OF PRODUCTS TO WHICH SUCH CLAIM RELATES.

12. Recall. Upon learning or receiving notice of a credible claim or potential claim of a defect in, or tampering with, any Products, Customer shall promptly notify Seller 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. Customer and Seller shall assist each other in all reasonable ways to resolve any claims involving Products subject to a recall or safety notice.

13. Taxes and Other Fees. Customer will pay or cause to be paid all taxes, fees, levies, penalties, licenses, charges, or interest imposed by any government authority ("**Taxes**") on or with respect to the Products prior to or at the Delivery Point. If either party is required to remit or pay Taxes that are the other party's responsibility under these Terms, then the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes shall furnish the other party with any documentation necessary to evidence such exemption.

14. Termination for Convenience. Seller reserves the right to cancel any Order, in whole or in part, with or without cause at any time by giving Customer written notice of such cancellation, provided that Customer shall pay for Seller's performance under the Order satisfactorily completed as of the date of receipt of Seller's notice of cancellation as invoiced by Seller. In no event shall Customer have the right or ability to cancel any Order, either in whole or in part, without Seller's prior written consent, which may be withheld in Seller's sole and absolute discretion. Should Customer attempt to cancel any Order and/or refuse to accept any conforming Products, then Customer shall be in default of its obligations under these Terms and any and all

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amounts owed in connection with such Order and/or Products shall become immediately due and payable.

15. Termination for Cause.

- a. **Default.** Customer shall be in default if Customer: (i) fails to make any payment to Seller when due; (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; (iii) becomes insolvent or enters into a voluntary or involuntary bankruptcy or receivership; or (iv) fails to fully and faithfully perform and observe all covenants and obligations under these Terms (singularly and collectively, a “**Default**”).
- b. **Remedies.** If Customer is in Default, Seller may, in its sole discretion, avail itself to any or all of the following remedies: (i) elect not to pay Customer any amounts due for the purpose of setoff against and to the extent of Seller's damages caused by Customer's Default; (ii) terminate or suspend Seller's performance under any Order, in whole or in part, effective immediately upon Customer's receipt of Seller's notice of termination/suspension; or (iii) pursue and enforce any and all other rights or remedies available to Seller at law or equity.

16. **Confidentiality.** All non-public, confidential or proprietary information of Seller, 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 Seller to Customer, 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 Customer without the prior written consent of Seller. Customer shall promptly return to Seller all Confidential Information upon Seller's written request.

17. **Government Contracts.** Seller does not knowingly participate in contracts with the government of the United States of America as either a contractor or subcontractor of any tier and makes no effort to monitor or guarantee compliance with the laws, rules, ordinances, codes, and orders and decrees applicable in connection with such federal government contracts, including, without limitation, Executive Order 11246, as amended, and its implementing regulations. Customer shall immediately notify Seller in writing if all or any portion of the Products or Order are or may be necessary for the performance of one or more contracts or subcontracts with the government of the United States of America.

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

19. **Assignment.** Customer may not assign any of its rights or obligations under any Order, Sale, and/or Terms without Seller's prior written consent. Any attempted assignment of such rights or obligations without Seller's prior written consent shall be void. Seller, however, may assign, delegate, or transfer its rights and

obligations under any Order, Sale, and/or Terms, in whole or in part, to any Affiliate. These Terms shall apply to and bind the successors and permitted assigns of the parties.

20. **Change of Terms.** Mark Foods may change these Terms at any time by publishing the updated Terms to its Website. Customer's acceptance of delivery of, retention, or use of all or any portion of Products sold by Seller, whichever occurs first, shall constitute acceptance of the amended Terms.

21. **Force Majeure.** In the event that Seller is unable to perform under this Agreement due to circumstances beyond its control, including without limitation, circumstances involving labor disputes, act of God, acts or orders of any government (whether regulations, requirements or restrictions), war, terrorism, pandemic, epidemic, quarantines, transportation issues, embargoes, seizures, adoption or enactment of any new laws, ordinances, or governmental regulations, explosions, strikes, extraordinary currency devaluations, taxes or custom duties, import issues, trade issues, weather, fire, flood or catastrophe, Seller shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

22. **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. Customer 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.

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

24. **Notices.** Any notice, request, demand, or other communication required or permitted by this Agreement that is addressed (if to Seller) to the Seller's contact listed on the Invoice, with a copy to Mark Foods, Inc., Attn: CEO, 1115 Broadway #301, New York, NY 10010, and (if to Customer) 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.

25. **Set Off.** Seller, Mark Foods, and/or its Affiliates shall have the right at all times to set off any amount owing to or from Customer in connection with any Order, any Sale, or pursuant to any other agreement with Customer.

26. **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

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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.

27. **Relationship.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

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

29. **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.