

PURCHASE ORDER - GENERAL TERMS AND CONDITIONS

1. ACCEPTANCE - Seller's (a) execution of this Purchase Order or any release or revision related hereto (collectively "Order"), (b) commencement of work on the goods, materials and/or services to be purchased hereunder ("G&S"), (c) shipment of the goods covered hereunder or (d) failure to raise any issues with this Order within 48 hours of receipt, whichever occurs first, shall be deemed Seller's acceptance of this Order. SELLER'S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS OF THIS ORDER AND DOES NOT INCLUDE ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER OR ANY ATTEMPT BY SELLER TO VARY THE TERMS HEREOF. In the event, Buyer directs Seller to sell Products to a third party under this Order, then the Seller will establish terms and conditions exclusively between the Seller and the third party, unless otherwise agreed.

2. COMPLETION - Time is of the essence for this Order. If the G&S are not delivered by the date, if any, stated in this Order, Buyer may, without liability and in addition to its other rights: (a) terminate or reschedule this Order by notice to Seller effective upon receipt as to goods not yet shipped and/or services not yet rendered; and/or (b) buy substitute G&S elsewhere and charge Seller for costs incurred for all or part of the price for substitute G&S.

3. SHIPMENT/ RISK OF LOSS/ RECORDS - Seller shall prepare and pack for shipment all goods in accordance with good commercial practices. Buyer will not pay charges for packing, crating, shipping or delivery, unless otherwise stated herein. If Seller must ship in a more expensive manner than specified herein to comply with Buyer's required delivery date, Seller shall pay all increased costs, unless Buyer solely causes the necessity for and agrees in writing to pay the increased costs. Seller shall be responsible and bear the risk of loss or damage for the goods covered by this Order until they are delivered at the designated delivery point and accepted by Buyer, regardless of the point of inspection or transfer of title, unless Buyer is picking up the freight. Seller shall maintain manufacturing and shipment records for at least two (2) years from the date of Seller's shipment and Buyer shall have access to such records upon reasonable prior notice.

4. WARRANTIES/ COMPLIANCE WITH LAWS - Seller expressly warrants and represents to Buyer, its successors, assigns, customers, and users of Buyer's products, that all G&S shall: (a) conform to the terms of this Order and/or all applicable samples, drawings, standards, specifications, performance criteria and any other description requested, furnished or provided to or adopted by Buyer; (b) be free from defects in material and workmanship; (c) be merchantable, safe and appropriate for the purpose for which G&S of this kind are normally used; (d) together with their packaging, labeling and accompanying materials be properly contained, packaged, marked and labeled; (e) be fit for the particular purpose for which Buyer intends to use the G&S; (f) not infringe the rights of any third parties; and (g) with respect to services, be performed diligently in a good and workmanlike manner to the highest professional standards. In addition, Seller shall comply and the G&S shall comply and/or be performed in compliance with all applicable federal, state and local laws, ordinances, orders, rules, actions, regulations and industry standards. Seller further warrants and represents that no liens, encumbrances, security interests, or other third party claims shall attach to any property owned or leased by Buyer in relation to Seller's performance hereunder and that Seller has all right, title and interest in the goods to grant to Buyer the rights and licenses contained herein. Seller shall provide a Certificate of Analysis (COA) for all goods purchased by Buyer and Seller shall comply with all requirements of Buyer's Supplier Quality Expectations Manual and Code of Conduct for Suppliers, as amended by Buyer from time to time.

5. BUYER'S RIGHTS - Buyer's inspection, testing, payment or use of the G&S shall not constitute acceptance thereof and shall not affect Seller's obligations and warranties set forth herein, which shall survive Buyer's inspection, testing, acceptance and/or use. Nothing contained herein shall relieve Seller in any way from its obligations to test, inspect and control the quality of the G&S. Buyer may reject or revoke acceptance of any G&S that are, in Buyer's judgment, defective and/or do not conform to the terms of this Order (non-conforming G&S) at any time. In addition to any other rights available to Buyer, upon Buyer's rejection or revocation of acceptance of G&S or Seller's failure to meet the terms of this Order in whole or in part, Buyer shall, in its sole discretion, direct Seller to, at Seller's sole cost and expense (a) refund to Buyer the price of such G&S as well as any costs incurred by Buyer in relation thereto; or (b) upon a written replacement order from Buyer, replace or correct any such G&S at no additional cost to Buyer within seven (7) days of Buyer's demand; or (c) credit Buyer's account with an amount equal to the amount paid for such G&S, as well as any costs incurred by Buyer in relation thereto. Buyer may also choose to replace any non-conforming G&S from any other source, and Seller will reimburse Buyer for any incremental costs incurred by Buyer in connection therewith. In addition, Buyer may, at Seller's risk, return to Seller non-conforming goods and/or goods supplied in excess of quantities ordered and may charge Seller for all expenses related thereto. If Seller fails to take any of the corrective action described herein, Buyer, upon notice to Seller, may take such action and charge Seller for all costs incurred by Buyer in relation thereto. Buyer's count as to the quantity of goods delivered shall be accepted as final and conclusive on all shipments that are not accompanied by a packing slip indicating the quantity delivered. Unless specified otherwise, all G&S delivered hereunder shall not be in excess of the quantity ordered.

6. PRICE / INVOICES / SET OFF - Seller warrants that the prices for the G&S are complete and not less favorable than those currently extended to Seller's other customers of similar account size for similar quantities of the same or similar G&S. If Seller offers better prices for the G&S to other customers of similar account size during the term of this Order, Seller will reduce Buyer's prices correspondingly. The price set forth in this Order is firm and is the total amount due from Buyer for the G&S, including without limitation duties, taxes or any other charges agreed upon by Buyer, subject to adjustment for any rebates or credits described herein. Buyer shall not be responsible for any amount above the total amount expressly stated in this Order. Without Buyer's prior written consent, Seller shall not add any charges. To the extent no price or prices are set forth herein, Seller's price shall be the lowest market price prevailing at time of either the quotation or shipment, whichever price is lower, and in no event may this Order be filled at prices higher than those last previously quoted or charged to Buyer without Buyer's written consent. Invoices shall be submitted to Buyer immediately upon shipment of the goods or performance of the services. Payment terms are as follows:

(a) If Seller accepts credit card payments, upon Buyer's receipt of an applicable, accurate invoice, Buyer will contact Seller within two (2) business days and provide a credit card number to Seller to use to process payment of such invoice. Seller must pass through Buyer's purchase order number when processing such approved invoice for payment. If Buyer has a claim against Seller resulting from this Order or any other transaction, Buyer may deduct such disputed amounts from Seller's invoice and only authorize payment for the undisputed amounts; or

(b) If Seller does not accept credit card payments and unless otherwise agreed, payment terms for all undisputed amounts shall be net one hundred twenty (120) days from the date of Buyer's receipt of the applicable, accurate invoice. If Buyer has a claim against Seller resulting from this Order or any other transaction, Buyer may deduct or set off disputed amounts from Seller's claims for amounts due.

As it relates to the interpretation and application of this Section, invoice receipt shall never occur prior to Buyer's receipt of the applicable G&S. In the event an invoice arrives prior to Buyer's receipt of the applicable G&S, Buyer's payment period shall not begin until Buyer's receipt of the applicable G&S.

7. CHANGES - Buyer may, at any time prior to delivery, change the specifications for the G&S and delivery thereof. Seller will accept any changes, provided that if a change increases or decreases the cost or time required for performance, the parties will equitably adjust and modify the terms hereof in writing accordingly. Seller shall inform Buyer in advance of any material change, intentional or otherwise, to the G&S, including without limitation, changes in composition, quality specifications, manufacturing processes, labeling, functionality, safety, manufacturing locations, and any suppliers or subcontractors. Upon notice of any change, Buyer may cancel this Order. Any revisions to this Order, price or otherwise, must be in writing and approved by Buyer.

8. INDEMNIFICATION - Seller, its parents and affiliates shall defend, indemnify and hold Buyer and its officers, employees, agents, servants and other vendors harmless from and against any and all claims, demands, actions, causes of action, proceedings, judgments and other liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees and costs) of any nature (collectively, the "Claim") to the extent they are due to or arise from: (i) the breach of any representation, warranty or obligation contained in this Agreement by Seller; or (ii) the negligence or willful misconduct of Seller or any of its directors, officers, employees, or agents; or (iii) alleged patent, copyright, trademark, trade dress, trade secret or other intellectual property right infringement or alleged unfair competition resulting from similarity in design, trademark or appearance of the G&S. The foregoing indemnification obligations shall not apply to the extent the Claim is due to or arises from the gross negligence or willful misconduct of Buyer. In addition, Seller hereby assumes all responsibility and liability for any and all damage, loss or injury of any kind or nature whatsoever to persons or property caused by or resulting from the performance of the work provided for hereunder, or in connection therewith. If any Claim is brought or threatened against Buyer under the terms hereof, at Seller's expense, Seller shall, upon notice from Buyer, assume the defense thereof and pay any and all costs, charges, attorney's fees and other expenses, and any and all judgments that may be incurred or obtained against Buyer. Buyer may be represented by and participate through its own counsel with respect to any Claim.

9. INSURANCE - During the term of this Order, Seller shall, at its sole cost, have in effect and keep in force, insurance coverage which is primary and non-contributory as to any insurance maintained by Buyer, with insurance companies maintaining an A.M. Best rating of A- or better. Upon request, Seller will furnish certificates of insurance to Buyer. Buyer shall be named as an additional insured on all such policies, except the worker's compensation and employer's liability policies. All insurance shall also include waiver of subrogation provisions in favor of Buyer. The minimum insurance coverage to be maintained by Seller shall be as follows: (i) commercial general liability insurance, including products and completed operations, broad form contractual and advertising liability coverage, providing bodily injury and property damage coverage on an occurrence form, affording minimum single limit protection of no less than *One Million Dollars* (\$1,000,000) per occurrence and with deductibles no greater than *One Hundred Thousand Dollars* (\$100,000) per occurrence; (ii) commercial automobile liability insurance to cover all owned, non-owned and hired vehicles in the amount of at least *One Million Dollars* (\$1,000,000) per occurrence; (iii) worker's compensation insurance in accordance with the legal requirements of the state where Seller conducts its operations as well as employer's liability insurance in the amount of at least *Five Hundred thousand Dollars* (\$500,000) per occurrence; (iv) excess or umbrella liability insurance with limits of at least *Five Million Dollars* (\$5,000,000) per occurrence in excess of the limits afforded for general liability, automobile liability and employer's liability provided above; (v) professional liability insurance with limits of at least one million dollars (\$1,000,000) per claim for economic damages sustained by Buyer and due to errors and omissions arising out of performance of professional services to Buyer. All such certificates and policies shall include a provision whereby Buyer will be given thirty (30) days advance written notice of the insurer's intention to cancel or materially alter such policies.

10. CONFIDENTIALITY/ PUBLICITY - Seller, its employees, agents and representatives, shall consider as Buyer's "Confidential Information," all non-public information provided by Buyer, all specifications or other documents prepared by Seller in connection herewith, the fact that Buyer has contracted to purchase G&S from Seller, and all other non-public information relating to this Order. Without Buyer's prior written consent, Seller shall not (a) disclose or use Confidential Information for any purpose other than performing this Order, (b) announce, publicize or discuss with third parties the subject matter of this Order, (c) include Buyer's name or trademarks in any marketing materials or (d) disclose that Buyer is Seller's customer. The foregoing provisions shall be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality, non-disclosure and/or publicity.

11. TERMINATION FOR CONVENIENCE - Upon notice to Seller, Buyer may terminate this Order or any part hereof, at any time prior to any delivery hereunder, solely for its convenience, and in such case Buyer will only pay Seller an amount equal to a percentage of the Order price reflecting the amount of work performed or goods delivered prior to Seller's receipt of Buyer's notice. Buyer shall not pay Seller for work performed after Seller's receipt of the notice of termination, nor for any costs that Seller could have reasonably avoided. Upon receipt of Buyer's notice, Seller shall immediately stop and cause all suppliers and subcontractors to stop all performance hereunder.

12. TERMINATION FOR CAUSE - In addition to Buyer's other rights and without liability, upon notice to Seller, Buyer may terminate this Order, or any part hereof, for cause in the event of any default by Seller of the terms or conditions of this Order, including, without limitation, no delivery, late delivery, delivery of nonconforming or defective goods, and/or Seller's failure to provide Buyer, upon request, with reasonable assurances of future performance. Buyer may also terminate for cause hereunder if Seller fails any quality requirements, including, but not limited to, audits and inspections by Buyer, a third party or the government or any governmental agency. Buyer may also terminate for cause hereunder if Seller becomes insolvent, is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or seeks protection from creditors under any applicable laws. Upon receipt of Buyer's notice, Seller shall immediately stop and cause all suppliers and subcontractors to stop all performance hereunder.

13. LIMITATION ON LIABILITY/STATUTE OF LIMITATIONS - BUYER SHALL NOT BE LIABLE FOR ANTICIPATED PROFITS, SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PENALTIES OF ANY KIND. BUYER'S LIABILITY ON ANY CLAIM ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS ORDER OR FROM PERFORMANCE OR BREACH HEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE G&S OR UNIT HEREOF GIVING RISE TO THE CLAIM. SELLER MUST COMMENCE ANY ACTION AGAINST BUYER ARISING FROM THIS ORDER WITHIN ONE YEAR FROM DATE THE CAUSE OF ACTION ACCRUES.

14. GOVERNING LAW/DISPUTE RESOLUTION - THIS ORDER SHALL BE GOVERNED AND INTERPRETED BY THE LAWS OF THE STATE OF DELAWARE. VENUE AND JURISDICTION FOR ANY ACTION BASED ON THIS ORDER SHALL REST EXCLUSIVELY IN WILMINGTON, DELAWARE. Any dispute, controversy or claim arising out of this Order, or the breach thereof, that cannot be settled through negotiation shall be settled (a) first, by the parties trying in good faith to settle the dispute by mediation in the county where Buyer's corporate headquarters is located under the Commercial Mediation Rules of the American Arbitration Association ("AAA"), and (b) if the dispute controversy or claim cannot be settled by mediation, then by arbitration in the county where Buyer's corporate headquarters is located administered by the AAA under its Commercial Arbitration Rules. Judgment on the award by the arbitrator may be entered in any court having jurisdiction thereof. In the event that a party requires interim relief, this arbitration provision shall not apply to the extent a party needs to seek such interim relief from the appropriate court under this provision. If any action at law or in equity, through arbitration or otherwise, is necessary to enforce the terms of this Order, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses, in addition to any other relief to which such prevailing party may be entitled.

15. GENERAL CONDITIONS - Seller may not assign, delegate or sub-contract its rights or obligations under this Order without the express written consent of Buyer. This Order shall inure to the benefit of and be binding upon the parties hereto and to their respective successors and legal representatives. No provisions of this Order will be waived by any party except in writing. The parties hereto agree that the waiver by any party of a provision of any provision of this Order shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or any other provision or condition of this Order. If any provision or application of this Order shall be held invalid or unenforceable, the remaining provisions and applications of this Order shall not be affected, but rather shall remain valid and enforceable. Those obligations or responsibilities contained in this Order which are continuing in nature shall survive the expiration or termination of this Order.

16. ENTIRE AGREEMENT - Except as provided herein or as otherwise agreed upon by the parties in a separate agreement relating to the subject matter hereof, this Order and any documents referenced herein constitute the entire agreement between the parties regarding this Order and replace any contemporaneous oral or written communications between the parties related hereto. This Order may not be modified by any document issued by Seller or by the parties' course of dealing, custom or usage but only by a writing approved by both parties. In the case of a conflict with this Order, the terms of such mutually approved writing will prevail. In the event of a conflict between the terms of this Order and the manually populated terms accompanying this Order, the manually populated terms will govern. In the event, the Seller and Buyer have entered into a separate master or supply agreement with previously established terms and conditions, then those previously negotiated terms will take precedence over the general terms and conditions of this Purchase Order. If there is a conflict between the populated terms of this Purchase Order and a previously negotiated master or supply agreement, then the populated terms will govern.

17. FORCE MAJEURE - Buyer shall not be considered to be in default in the performance of its obligations under this Order, to the extent and for the period of time that performance of any such obligation is prevented, interrupted, or delayed by fire, flood, earthquake or other natural disaster, raw material shortage, war or other cause, which is beyond the reasonable control of Buyer, provided, however if performance of any obligation is so prevented, interrupted, or delayed for a period in excess of thirty (30) days, Buyer, may, at its option, cancel this Order upon not less than three (3) days prior written notice to Seller and Buyer shall pay Seller for any conforming services properly performed or conforming goods accepted by Buyer prior to the date of such termination.

18. SUPPLIES AND EQUIPMENT - All materials, supplies, or equipment furnished or paid for by Buyer in connection with this Order shall remain Buyer's property (title shall not transfer to Seller), shall be maintained by Seller in good condition, shall be used by Seller only for Buyer, and shall be returned to Buyer or otherwise disposed of as directed by Buyer upon completion of this Order.

19. DEVELOPED ITEMS - Unless the parties otherwise agree in a separately executed product development agreement or the respective G&S is a pre-existing off-the-shelf item of Seller, all products, packaging, concepts, processes and other materials developed by Seller for or at the direction of Buyer (collectively the "Developed Items") shall be the sole and exclusive property of Buyer, and Seller automatically assigns, and will cause all of its employees, agents, contractors, and affiliates to assign, all right, title, or interest it or they may have in such Developed Items to Buyer. Upon request of Buyer, Seller and all of its employees, agents, contractors, and affiliates shall take such further actions including execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment.

20. SELLER'S RISK - Seller agrees that it, its employees and subcontractors, are performing services as independent contractors and not as Buyer's employees, regardless of where they perform services. Seller shall be fully responsible for its employees, agents, officers, contractors and subcontractors, including without limitation all compensation and taxes related thereto. Seller shall carry on its work at its own risk until the same is fully completed and accepted, and shall, in case of any accident, destruction or injury to any goods or materials before final completion and acceptance, repair and replace the goods or materials so injured, damaged and destroyed, at Seller's expense and to Buyer's satisfaction. When materials or equipment are furnished by others for Seller's use, Seller shall receive, unload, store, handle, and be responsible therefore as though such materials or equipment were being furnished by Seller hereunder. To the extent Seller is performing hereunder at Buyer's premises, Seller and its subcontractors shall take all safety precautions and furnish and install all guards necessary for the prevention of accidents. Buyer shall not be responsible nor be held liable for any damage to person or property arising from the use, misuse or failure of any rigging, blocking, scaffolding or other equipment used by Seller or any of its subcontractors, notwithstanding Buyer's ownership, provision or loan of such equipment to Seller or to any of its subcontractors. Notwithstanding anything to the contrary in this Order, Buyer does not waive any of its rights to workers' compensation immunity in any jurisdiction.

21. EEO COMPLIANCE - Buyer is an equal opportunity employer and will comply with Executive Order 11246, 41 CFR Part 60-1.4. Buyer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, veteran status, genetic information, or any other protected status covered by state or local law. Additionally, Buyer shall abide by the requirements of 41 CFR Parts 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities. Seller warrants and represents that it will fully comply with all Department of Labor and EEOC rules, regulations, guidelines, and orders including, but not limited to, Executive Order 11246, 41 CFR Ch. 60 (in particular the record keeping requirements at 41 CFR Sec. 60-1.12), 29 CFR part 471 (appendix A to subpart A), which are incorporated herein by reference, and any other applicable state and local laws relating to equal employment opportunities and affirmative action.

22. UTILIZATION OF DIVERSE BUSINESS CONCERNS. In accordance with Conagra procurement policies and FAR 52.219-8 Seller agrees to actively seek out and provide the maximum practicable opportunities for diverse businesses to participate in the subcontractors Seller awards to the fullest extent consistent with the efficient performance of this Contract. Buyer may request subcontracting plans and quarterly reports on diverse business utilization.