

PURATOS CORPORATION
TERMS AND CONDITIONS OF SALE

1. **GOVERNING TERMS AND AGREEMENT.** The following general terms and conditions ("Terms") shall exclusively govern the transaction(s) of the sale of products ("Products") between Puratos Corporation ("Seller") and buyer ("Buyer"). These Terms and Seller's Order Acknowledgement, Contract of Sale and/or Invoice (collectively, "Seller's Sale Documents") shall constitute the entire agreement between Buyer and Seller as to the sale of such Products (the "Agreement"). Seller hereby expressly rejects the applicability of any general terms and conditions of Buyer. Notice of objection to any different or additional terms proposed by Buyer is hereby given. These Terms shall not be modified, except in writing, executed by an authorized officer of Seller.

Buyer expressly waives all provisions contained in any of Buyer's correspondence or forms, including purchase orders, involved in this sale which negate, limit, extend or conflict with the Terms and this Agreement. Buyer agrees that it has not been induced to enter into this Agreement by any oral or written representation, guarantee or warranty made by Seller, its employees, agents or representatives, other than as expressly set out in this Agreement.

2. **PRICE AND TERMS OF PAYMENT.** All Products will be invoiced at the price in effect at time of shipment, whether or not Buyer is in possession of a price book or price sheet reflecting prices different than those prices in effect at time of shipment, unless expressly provided otherwise in this Agreement. All prices are exclusive of any and all taxes, duties or government fees. Any tax or other government charge upon production, sale, use or shipment of Products or services imposed by federal, state, municipal or other authorities shall be charged to and paid by the Buyer in addition to the purchase price. If Seller grants a discount, this discount only relates to the delivery specifically mentioned in Seller's Sale Documents.

Unless the prices have been indicated as firm in Seller's Sale Documents, Seller is entitled to increase the prices of the Products still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to raw materials, ingredients, products obtained by Seller from third parties, government charges, freight costs and insurance premiums. Seller shall notify Buyer of such increases in the prices of Products.

All prices are F.O.B. Seller's point of shipment unless otherwise specified in Seller's Sale Documents. Upon due tender of the Products for delivery at the F.O.B. shipping point, title to the Products passes to Buyer and all risks of loss or damage pass to Buyer, regardless of terms of payment or form of bill of lading, or the mode of shipment, or who pays the actual transportation charges.

3. **PAYMENT.** Seller may refuse, change or withdraw extensions of credit at any time in its sole discretion. Seller shall have the right to demand payment on delivery of the Products or prior to shipment of the Products to the extent it deems advisable. Seller reserves the right to require payment in cash or by certified check. BUYER WAIVES ANY RIGHT OF SET-OFF AND SHALL MAKE NO DEDUCTIONS FROM PAYMENTS DUE TO SELLER OR FOR ANY DAMAGES OF ANY TYPE CLAIMED BY BUYER AGAINST SELLER.

Buyer agrees to pay Seller in accordance with the terms (including, if applicable, credit terms) reflected on Seller's Sale Documents. In cases of any conflict on pricing and terms of payment in Seller's Sale Documents, or otherwise, Seller's Invoice to Buyer shall control. If payment due Seller is not made in accordance with these terms, Buyer agrees to pay all costs and expenses of collection including but not limited to attorney's fees incurred, up to the maximum permitted by applicable state law. A service charge will be imposed on overdue amounts and a service charge of \$25.00 will be imposed for each returned check. Overdue payments shall bear interest at the lesser of 1.5% per month or the maximum permitted by law.

4. **LIMITED WARRANTY.** Products are sold subject to Seller's Food Guaranty. The only warranty applicable to the Products is that the Products shall conform with Seller's specifications for such Products on the date of shipment to Buyer.

Upon delivery to Buyer, Buyer is required to carefully and thoroughly inspect all Products for conformity with the above warranty, and if determined to be nonconforming, Buyer shall notify Seller promptly in writing of any nonconformance (and in no event later than 30 days after receipt of the Products by Buyer), carefully and properly store such Products and allow inspection of same by Seller. Upon a finding by Seller that the Products were nonconforming with the above limited warranty, Seller shall, at its sole discretion, either replace the nonconforming Products or credit the actual purchase price paid by Buyer for Products found to be nonconforming, against future orders. Replacement of nonconforming Products or credit of the Price shall be Buyer's exclusive remedy.

SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THE EXPRESS WARRANTY DESCRIBED ABOVE, AND MAKES NO WARRANTY OF OR CONCERNING, AND EXPRESSLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF OR CONCERNING FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY SPECIAL INCIDENTAL, CONSEQUENTIAL, CONTINGENT, NEGLIGENCE OR

PUNITIVE DAMAGES RESULTING FROM BREACH OF WARRANTY, DELAY OF PERFORMANCE OR ANY OTHER DEFAULT HEREUNDER.

The warranty described above cannot be modified, changed or superseded by any Buyer form or paper, policy, purchase order, correspondence, memorandum or other document, recording or transmission. No claim of any kind with respect to any Products delivered, shall be greater than the actual purchase price paid by Buyer for the Products in respect to which nonconformity, damages or loss are claimed. Failure to give written notice of any claims of nonconformity or otherwise, with respect to the Products, within 30 days of delivery of the Products to Buyer, shall irrevocably waive any such claim. Buyer shall not return the Products to Seller for any reason, unless authorized by Seller in writing and in accordance with Seller's applicable policy on returns.

The limited warranty granted pursuant to this Agreement is extended to Buyer as the original purchaser from Seller and is non-transferable to and non-assignable. No rights against Seller shall be created by any transfer or assignment, nor shall any rights against Seller survive any transfer or assignment. Buyer, its agents or representatives shall not claim, represent or imply nor permit its customers, distributors, applicators or contractors to claim, represent or imply that this limited warranty extends or is available to parties other than Buyer, and to the limit of its legal right to do so. Buyer shall cause any party to cease and desist of any misrepresentation.

5. **DEFAULT BY BUYER.** Each shipment hereunder shall be deemed a separate contract and if Buyer fails to pay any invoice when due, or fails to accept any shipment as scheduled, Seller may, without prejudice to other remedies, either defer further shipments until the default is corrected or cancel the unused portion of this order and of any or all other orders. Seller's waiver of any provisions herein or any breach thereof shall not constitute a waiver of any subsequent breach nor of any other provision herein. Orders may not be cancelled or terminated by Buyer without the written consent of Seller and subject to payment or reimbursement of Seller's costs, expense or loss, including overhead and anticipated profit.

6. **BUYER OBLIGATIONS.** Buyer shall, in its own name, apply for any required U.S. export license and hereby assumes full responsibility for the exportation of the Products and for compliance with all U.S. and foreign laws applicable to the export and import of the Products.

7. **QUALITY ASSURANCE.** Seller shall have no obligation to ensure that any goods or services purchased from Seller meet any special quality assurance specifications and/or other requirements, unless expressly accepted by Seller in writing.

8. **FORCE MAJEURE.** Seller shall not be liable for any loss, damage, expense, cost, product, failure, cover, non-performance, delay or breach caused or occasioned by acts of God or any governmental authority, labor disputes (including lockouts), terrorism, unusual weather conditions, fire, flood, accident, unavailability of materials or components or late delivery thereof, emergency repairs, quality control issues, plant or equipment breakdown, boycott, embargo, insurrection, riot, civil disturbance, war, exposure to conditions or processes not specified by Seller, or any other cause which is unavoidable or beyond Seller's reasonable control.

9. **WAIVER.** No waiver by Seller or any breach of these Terms shall constitute a waiver of any other breach or of such provision. Seller's failure to object to provisions contained in any communication from Buyer shall not be deemed an acceptance of such provisions or a waiver of these Terms.

10. **GOVERNING LAW.** These terms, this Agreement and the transaction between Buyer and Seller shall be governed, interpreted and enforced in accordance with the laws of the State of New Jersey, without regard to its conflict of laws rules.

11. **NO OTHER REPRESENTATIONS.** There are no understandings, agreements, representations or warranties, either written or oral, relative to the Products that are not fully expressed in these Terms, which supersede and cancel any previous understanding or agreement between the parties with respect to the subject matter of the order. Any subsequent representation made by any person, including distributors, dealers, employees and representatives of Seller, which is inconsistent with or adds to these Terms shall not be binding on Seller unless approved in writing by an authorized officer of Seller.

12. **ENTIRE AGREEMENT AND ENFORCEABILITY.** This Agreement shall not be altered in any manner except by a separate, written agreement executed by authorized officers of both Buyer and Seller. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected.