

TERMS AND CONDITIONS OF PURCHASE

ALL ORDERS PLACED BY LAMEX FOODS, INC., LAMEX AGRIFOODS, INC., AND LAMEX AGRIFOODS CANADA LIMITED ARE SUBJECT TO AND MADE CONDITIONAL UPON ACCEPTANCE OF THESE TERMS AND CONDITIONS OF PURCHASE.

1. **Contract.** The Contract consists of these Terms and Conditions of Purchase and the Purchase Contract sent by Purchaser to Seller, as identified on the face of the Purchase Contract, for the sale of products and services described in the Purchase Contract. Purchaser objects to modifications, conditions and additions to any of the terms of the Contract, irrespective of the wording of Seller's acceptance, invoice, shipping receipt, packing slip, other written material offer or proposal or by any other means. Regardless of its construction as an offer, acceptance, confirmation or use to place orders for products or services pursuant to an earlier contract, this Contract incorporates by reference all terms of the Uniform Commercial Code providing any protection for the Purchaser, including, without limitation, all express and implied warranty protection and all Purchaser's remedies under the Uniform Commercial Code. Variances in the items of the description, quantity, price or delivery schedule of the products shall constitute a rejection of this offer. Variances in other items shall constitute an acceptance of all terms of this Contract and a request for variances thereof which shall not become part of the contract of the parties unless specifically consented to in writing signed by the Purchaser.
2. **Modifications.** Purchaser shall have the right to change quantities, specifications, packaging, delivery dates, place of delivery, method of delivery, and other descriptions relating to the products and services. If such changes cause an increase or decrease in the cost or time required for Seller's performance, Seller and Purchaser will negotiate an equitable adjustment and this Contract shall be modified in writing accordingly. Seller agrees to accept any changes made pursuant to this paragraph.
3. **Termination.** Purchaser shall have the right to terminate this Contract in whole or in part by giving Seller notice, in writing, at any time prior to Seller's shipment of the products. Upon receipt of such notice, Seller agrees to stop all work hereunder except as Purchaser may otherwise direct. Such termination shall not constitute a breach of contract.
4. **Price and Taxes.** Price and delivery terms are as stated on the face of the Purchase Contract. Unless expressly otherwise provided on the face of the Purchase Contract, the price includes (i) all costs to comply with the terms and conditions of the Contract, including timely delivery, (ii) any and all taxes, including sales, use, excise, value added, or other taxes, and (iii) fees, duties, or other governmental impositions on the sale of the products or services covered by the Contract. If Purchaser is required to pay any taxes or other impositions, Seller will promptly reimburse Purchaser.
5. **Acceptance.** Seller shall be deemed to have accepted this Contract upon (a) Seller's returning to Purchaser acknowledgement of this Contract or (b) Seller's shipment of the products subject to this Contract or (c) 48 hours having passed from the time Seller receives the Contract without Seller providing any response or rejection of the Contract, whichever occurs first. Any acceptance of this Contract is limited to acceptance of the express terms of the terms set forth herein and on the face of the Purchase Contract, unless a modification thereof is specifically consented to in writing signed by the Purchaser.
6. **Representations and Warranties.**
 - a. **General warranties.** Seller warrants that all products and services shall be merchantable in the trade as products strictly of the kind and quality described on the face hereof, shall be of good quality and free from defects, and shall conform to the specifications established on the face of the Purchase Contract. Seller warrants that it has free and clear title to the products, and that the products are free from any liens or encumbrances. If Seller knows or has reason to know the particular purpose for which Purchaser intends to use the products, Seller warrants that such products will be fit for such particular purpose. Seller warrants that its performance under this Contract, and the Products and Services provided hereunder, shall comply in all respects with all applicable laws, regulations, and notices, inclusive of all applicable import and export laws and requirements, provided by the United States and the current laws and regulations of the country that the product is being imported to, or is ultimately destined to, including the country identified as the Health Certificate Destination in the Purchase Contract (collectively, "Laws").
 - b. **Product warranties.** Seller represents, guarantees, and warrants that its products shall, at Seller's cost, comply in all respects with all Laws. Without limiting the foregoing, Seller expressly

represents, guarantees, and warrants that:

- (1) the Product is food grade and fit for human consumption in accordance with all applicable Laws of the United States and the Laws of the country identified as the Health Certificate Destination in the Purchase Contract;
- (2) Seller complies with all applicable food safety laws and good manufacturing requirements and maintains all required licenses, registrations, and approvals for the products identified in the Purchase Contract to be imported into the United States and into the country identified as the Health Certificate Destination in the Purchase Contract;
- (3) the product is not adulterated or misbranded within the meaning of the U.S. Federal Meat Inspection Act, as amended, the Poultry Products Inspection Act, as amended, and/or the U.S. Federal Food, Drug and Cosmetic Act, as amended, state and local Laws, and the Laws of the country identified as the Health Certificate Destination in the Purchase Contract;
- (4) the product conforms to any statements made on the containers or labels or advertising material or pamphlets for such products, and that the product will be adequately contained, packaged, marked and labeled, in sanitary, food-safe containers;
- (5) Seller and its Products and Services comply with all applicable Laws that govern the production, labeling, manufacturing, or testing specifications for the product or warnings with respect to the product contents or in relation to product safety, environmental protection, human health, labor, industry, and sale of the product (including without limitation the Food, Drug, and Cosmetic Act, Food Safety Modernization Act, Perishable Agricultural Commodities Act, U.S. Federal Meat Inspection Act, U.S. Poultry Products Inspection Act, California Proposition 65, U.S. Federal Trade Commission and Federal Food and Drug Administration labeling requirements, U.S. Customs and Border Protection foreign country of origin regulations, U.S. Environmental Protection Act, Occupational Safety and Health Act, Consumer Product Safety Act, all as amended), state and local Laws, and the Laws of the country identified as the Health Certificate Destination in the Purchase Contract;
- (6) the Product is processed, packed, stored, and transported under clean and sanitary conditions, in compliance with all FDA, USDA, state and local regulations, and the Laws of the country identified as the Health Certificate Destination in the Purchase Contract. Seller carries the requisite certifications/registrations for its food facilities with the FDA or USDA, as applicable, and their equivalent governing bodies in the country identified as the Health Certificate Destination in the Purchase Contract;
- (7) Seller will comply with all inspection requests, and adhere to all safety requirements, of Purchaser and any governmental entity which has jurisdiction over the products and services;
- (8) any and all pesticide applications and pesticide residues comply with the Federal Food, Drug, and Cosmetic Act, the U.S. Environmental Protection Act, and the Laws of the country identified as the Health Certificate Destination in the Purchase Contract, and that Seller will conduct all necessary testing for such approvals;
- (9) if the Product is frozen meat or poultry, that the product is the fresh frozen product of animals slaughtered not more than 90 days prior to delivery hereunder and shall be guaranteed to pass sanitary inspection of the Meat Inspection Division and the country identified as the Health Certificate Destination in the Purchase Contract;
- (10) if the Product is a perishable agricultural commodity, that the product sold is produced from the most recent crop cycle, and shipped within 2 months of the processing/fill date, unless expressly agreed to in writing by Purchaser;
- (11) all products furnished hereunder will conform, in all respects, to samples provided by Seller to Purchaser; and
- (12) Seller warrants that the procedures by which Seller was approved as a vendor by Purchaser will be followed unless otherwise agreed to in writing by Purchaser.

c. **Service warranties.** All services provided by Seller under this Contract will be satisfactorily performed by Seller to Purchaser's specifications, drawings, samples, and any other description furnished or adopted by Purchaser. In the absence of exact specifications, all materials furnished will

be of the highest grade and best quality, and the work will be performed in a professional and first-class manner best suited for its use and intended purpose. Seller will re-execute, at its own cost and expense, any defective or unsatisfactory work that appears during progress of the work and will remedy and replace, at Seller's own cost and expense, any defective or unsatisfactory work that appears during progress of the work and will remedy and replace, at Seller's own cost and expense, any defects due to faulty materials or workmanship. The work will be at Seller's risk until it is accepted by Purchaser.

d. Continuing obligation. The warranties set forth in this Paragraph are conditions to this Contract and are in addition to all other warranties, express or implied. Delivery, inspection, acceptance or use of the products furnished hereunder shall not affect Seller's obligations under this warranty, and this warranty shall survive inspection, test, acceptance, payment, and use. All warranties will run to Purchaser, its successors, assigns, customers, users of the products, and any third party injured in person or property by reason of any breach of such warranties. Seller expressly permits Purchaser's assignment of this warranty to such persons. Notwithstanding any language in Seller's forms, this warranty shall control insofar as the same may conflict with any warranty or limitation on warranty set forth in Seller's forms.

e. Rejection of any Limitation or Disclaimer. Purchaser objects to and expressly rejects any disclaimer of warranty, fitness for a particular purpose, merchantability, freedom from defects, or other disclaimer of the terms and conditions of this Contract in Seller's acceptance.

7. Seller Acknowledgements for Agrifood Products. For all sales made to Lamex Agrifoods, Inc. and Lamex Agrifoods Canada Limited, Seller agrees and acknowledges that:

a. Its product will be 100% authentic, without the addition of sugar, coloring, preservatives, heavy metals, pesticides, fungicides and any other item which may cause the product to be labelled as misbranded or adulterated. Purchaser operates a random control policy on sample testing based on multiple risk factors. Seller's product may be selected for full authenticity, pesticide, or heavy metal testing without prior notification to Seller. Product that fails to meet the standards required may be rejected at Seller's cost.

b. Seller agrees and acknowledges that particular limitations exist in the United States of America with respect to levels of carbendazim, pesticides and heavy metals. The following requirements must be met for products sold to Lamex Agrifoods, Inc. with United States as the destination country:

- (1) Carbendazim must be not detected in the format at which it enters the United States. This means that if the product shipped is concentrated juice, the FDA and/or Lamex Agrifoods, Inc. may test for carbendazim on random shipments. The test will be conducted on the concentrate and any findings will cause a rejection, a denial of entry into the United States, and subsequent shipment back to the Seller at the Seller's cost.
- (2) Pesticides must at all times comply with the USDA/FDA and EPA requirements, or more stringent requirements set forth in the contract based on a particular purpose, for example for product designated as organic or for use in baby food manufacturing.
- (3) Heavy Metals must be controlled according to the Purchase Contract requirements. The standard level for arsenic is <10ppb on single strength and the standard level for lead is <50 ppb at single strength. Lamex Agrifoods, Inc. may purchase products subject to the requirements of California's Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986) or other laws which result in the heavy metal limits being more stringent than this standard requirement, as specified in the Purchase Contract. Where the requirements that must be met are not clear to Seller, Seller must confirm with Lamex Agrifoods, Inc. what requirements apply prior to shipment.

8. Remedies for Breach of Warranty. At Purchaser's option, Seller shall at Seller's expense replace or refund the full purchase price for any products for which a breach of warranty exists. Seller shall also be liable for all expenses and damages, including shipping, receiving and storage costs of Purchaser, damages to Purchaser's customers and third-parties, and all other incidental and consequential damages of Purchaser for any breach of warranty.

9. Vendor Authorization. Seller acknowledges that it has been approved by Purchaser as an authorized vendor pursuant to a vendor approval process. To the extent Seller intends to make any changes to its operations that differ from the operations upon which Seller was approved as an authorized vendor, Seller will promptly inform Purchaser of such change and obtain written approval from Purchaser prior to making such change.

10. **Confidentiality.** In the event Purchaser discloses to Seller any confidential information, including that which may be disclosed verbally, in writing, or through observation of Purchaser's facilities, Seller will not use such information for its own benefit or disclose Purchaser's confidential information to any third parties, except to the extent required by law and then only upon prior written notice to Purchaser. No information received by Purchaser in connection with negotiating and filling this Purchase Contract will be deemed to constitute a trade secret, or to have been given in confidence to Purchaser.

11. **Audit/Inspection.** Subject to reasonable confidentiality obligations, Purchaser and its third-party designee shall have the right to audit and inspect the records and facilities of Seller and Seller's agents, representatives and subcontractors used in performance of the Contract or relating to the products or services to the extent reasonably necessary to determine Seller's compliance with the Contract and all applicable laws and regulations that govern the products and services sold under the Contract. Seller will provide Purchaser or its third-party designee conducting the audit or inspection with reasonable assistance, including without limitation access to buildings, appropriate personnel, and work space. Purchaser's audit/inspection, or failure to conduct any audit or inspection, will not release Seller from any of Seller's obligations, representations, or warranties.

12. **Risk of Loss.** Except as otherwise set forth in the delivery terms on the face of the Purchase Contract, Seller shall retain the risk of loss and/or damage to the products until the products are physically delivered to Purchaser.

13. **Indemnity.** Seller agrees to indemnify, defend, and hold harmless Purchaser and its agents, servants, employees, officers, directors, customers, and any other third party to whom the Purchaser may owe a similar obligation by contract, lease agreement or operation of law (herein referred to as "Purchaser's Indemnitee") from and against any and all allegations, claims, demands, or other liabilities, loss, damage, fine, penalty, cost or expense (including attorney's fees) arising out of, concerning, or resulting from any non-conforming product or service provided under this Contract and any act, fault, or omission of Seller, its agents, employees, or subcontractors in the performance of this Contract, including but not limited to:

a. An actual or alleged negligent act or omission, or willful misconduct of Seller, or its employees, affiliates, agents, representatives, or any person performing services under the Contract;

b. An actual or alleged breach of any warranty or any other obligation in this Contract or actual or alleged conduct, action, or fact which would constitute a breach of any warranty or other obligation in this Contract;

c. Actual or alleged property damage, bodily injury, or death caused by any act or omission of Seller, its agents, or employees; and

d. Actual or alleged infringement or misappropriation of any United States or foreign patents, or any trademark or copyright.

14. **Insurance.** Seller agrees to maintain such insurance as will protect Seller, Purchaser and Purchaser's Indemnitee from any and all claims for personal injury (including death) and property damage, which may be made by or on behalf of customers of the Purchaser or the general public and which are based on the subject matter of the Contract. Not in limitation of the foregoing, Seller agrees to maintain product liability insurance coverage with the following terms: (1) a minimum of \$1,000,000 combined single limit, bodily injury/property damage coverage; (2) the policy must name as additional insured "[Purchaser] and its officers, directors, agents and employees"; and (3) the policy must provide for thirty days' prior written notice to Purchaser of cancellation. Upon Purchaser's request, Seller shall promptly provide Purchaser with evidence satisfactory to Purchaser of all such insurance coverage.

15. **Continuing Obligation.** The terms and conditions of this paragraph are continuing and shall be in full force and effect and shall be binding upon Seller with respect to each and every article shipped or delivered to Purchaser by Seller before the receipt by Purchaser of written notice of revocation hereof.

16. **Inspection and Rejection of Non-Conforming Products.** Seller acknowledges that Purchaser may act as a broker of the products and may resell the products to a buyer who will inspect such products for defects and nonconformity; accordingly, Seller agrees that Purchaser may exercise its right of rejection for defects or nonconformity at the request of, and for the benefit of, Purchaser's buyer. Seller will not substitute nonconforming products or back order such products without Purchaser's prior approval. The receipt of products or services, the inspection or non-inspection of or payment for the products or services will not constitute acceptance of the products and will not impair Purchaser's right

to reject non-conforming products. Certification of the products by the U.S. Department of Agriculture, the U.S. Food and Drug Administration, or any other similar foreign, federal, state or local government authority or agency shall not constitute proof that such products are sound or otherwise acceptable. Purchaser shall have the right to inspect the products before or after payment (without regard to the manner of shipment or any shipping or price terms contained herein) and to reject any or all products which are in Purchaser's judgment and sole discretion defective or nonconforming. Products ordered are subject to inspection at time of delivery to final customer. If any products are defective or otherwise not in conformity with the requirements of this order, in Purchaser's sole discretion, Purchaser may reject the products in their entirety or require price adjustments to compensate for expenses incurred to meet the required specifications. Purchaser may reject all or part of any shipment which contains nonconforming products. Seller will be subject to a \$250.00 rejection fee for administrative costs if products are rejected. In the case of full rejection, the products shall be removed immediately. Seller shall pay or reimburse Purchaser within 30 days of rejection notification for expenses and damages incurred from products not in conformity with this order. Products rejected and products supplied in excess of quantities called for herein may be returned to Seller at Seller's expense and, in addition to Purchaser's other rights, Purchaser may charge Seller all expenses of unpacking, examining, repacking and reshipping such products.

17. **Breach.** Any products not in accordance with any of the warranties set forth in this Contract may, at Purchaser's election and sole discretion, be treated as a partial or total breach of contract, and Purchaser may avail itself of any and all remedies available to it including, but not limited to (a) cancellation of the Contract, in whole or in part; (b) rejection and return to Seller, at Seller's expense, all or any portion of the products previously shipped, whether defective or not and whether previously accepted or not; (c) replacement from other sources of the products; and (d) retention of products and repair thereof at Seller's expense. In any such event, Seller will be liable to Purchaser for the full amount of such damages as flow from its breach of contract and Seller will not be entitled, in diminution of the same, to show that such procedures as Purchaser chose to follow upon such breach resulted in greater damages than might have ensued had Purchaser selected other available alternatives. One or more waivers (whether by non-enforcement, non-association, or otherwise) of the breach of any condition, term or provision of this Contract will not be construed as a waiver of a further, additional, or continuing breach of the same or any other condition, term, or provision of this Contract.

18. **Security Interest.** Seller hereby grants to Purchaser a security interest in the products described on the face hereof as security for the payment and performance of Seller's obligations hereunder. Further, if Purchaser shall pay for the products prior to the shipment by Seller, Seller shall hold the products in trust for the benefit of the Purchaser.

19. **Shipment.** Shipments must equal amounts ordered unless otherwise agreed by Purchaser. Partial shipments against this Contract are not authorized except as may be specifically stated or indicated under the delivery date specified on the face hereof, or unless authorization is obtained from Purchaser in writing.

20. **Time.** Seller acknowledges that the products purchased hereunder are purchased for resale and that Purchaser has promised deliveries to its customers based on the delivery date(s) specified herein. Time is, therefore, of the essence on this purchase order. If deliveries are not made by the date(s) specified on the face hereof, Purchaser reserves the right without liability and in addition to its other rights and remedies hereunder to terminate the Contract by notice as to products not yet received and to purchase substitute items elsewhere and Seller agrees to indemnify Purchaser for any loss incurred.

21. **Force Majeure.** Purchaser shall not be liable for delaying delivery and/or acceptance of the products, for its failure to accept any products or for its failure to perform hereunder or breach hereof due to strike, labor trouble, war, insurrection, civil commotion, the public enemy, fire, explosion, accident, flood, storm, act of God, act of any governmental authority, executive or administrative orders or other legal restrictions, riot, embargo, blockade, quarantine, wrecks or delay in transportation or any cause beyond the control of Purchaser which renders Purchaser's acceptance of the products impossible or impracticable, renders Purchaser unable to transport the products to its customer(s) in a commercially reasonable manner, or which renders Purchaser performance impossible or impracticable or causes Purchaser's breach hereof.

22. **Default.** If Seller(s) generally does not pay its debts as such debts become due, or admits in writing its inability to pay its debts generally, or makes a general assignment for the benefit of creditors, or any proceeding is instituted by or against Seller seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking

the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property; or (b) fails to comply with any of the terms and conditions hereof or with the terms and conditions of any other contract with Purchaser, then, the same shall amount to a breach hereof and a default hereunder. In the event of such breach or default, Purchaser shall be entitled to cancel any unfilled part of this Contract without any liability whatsoever and shall have such other rights and remedies afforded to Purchaser for breach of contract under the Uniform Commercial Code as enacted in the State of Minnesota, including but not limited to the remedies of incidental and consequential damages. Seller shall also be liable to Purchaser for Purchaser's attorney's fees and costs.

23. **Setoff.** Any claims for money due or to become due from Purchaser shall be subject to deduction or setoff by Purchaser by reason of any counterclaim arising out of this or any other transaction with Seller.

24. **Additional Rights.** The rights and remedies provided Purchaser herein shall be cumulative and in addition to any other rights and remedies provided at law or in equity.

25. **Limitations.** Any action resulting from any breach on the part of Purchaser arising out of this Contract must be commenced within one (1) year after the cause of action has accrued.

26. **Exclusion of Conventions.** The following international conventions will NOT apply to the Contract: (i) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods; (ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980; and (iii) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on June 14, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on April 11, 1980.

27. **Notices.** All notices allowed or required under this Contract shall be in writing and shall be deemed sufficient if sent by personal delivery, or by registered or certified mail, postage prepaid, or by first class airmail, postage prepaid (for international mail), to the parties at the addresses given on the face hereof or to such other address as either party may notify.

28. **Entire Agreement.** This Contract constitutes the entire agreement between Purchaser and Seller. This Contract supersedes any and all understandings, representations, proposals or negotiations between the parties, including without limitation, any brokerage confirmation between the parties, whether oral or written. No oral agreements contradict or vary in any way, any provision contained herein.

29. **Waiver.** No waiver of any provision of or default under this Contract shall affect Purchaser's rights thereafter to exercise any right or remedy in the event of any other default whether or not similar. No waiver shall in any event be effective unless in writing and signed by purchaser.

30. **Assignment.** The rights and obligations of Seller hereunder may neither be assigned nor delegated without the prior written consent of Purchaser.

31. **Severability.** If any provision of the Contract is held by any court to be invalid, illegal, or unenforceable, either in whole or in part, that holding will not affect the validity, legality, or enforceability of the remaining provisions, or any part thereof, of the Contract, all of which will remain in full force and effect. Any provision held to be invalid, illegal, or unenforceable shall be ineffective only to the extent of such prohibition or invalidity.

32. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Minnesota, U.S.A., without regard to conflict of laws analysis.

33. **Forum Selection.** For Contracts issued by a Purchaser located in the United States (based on the address of the Purchaser identified on the face of the Purchase Contract), any action arising from the contract shall be brought exclusively in the state or federal court located in the State of Minnesota, County of Hennepin. Seller, acting for itself and its successors and assigns, expressly and irrevocably consents to the exclusive jurisdiction in the state and federal courts of Hennepin County, Minnesota. For Contracts issued by a Purchaser outside the United States, any action arising from the contract shall be brought exclusively in the jurisdiction in which the address of the Purchaser on the face of the Purchase Contract is located. Seller, acting for itself and its successors and assigns, expressly and irrevocably consents to the exclusive jurisdiction in the jurisdiction in which the address of the Purchaser on the face of the Contract is located. Seller waives any objection to the venue of such action, including an objection based upon forum non-conveniens.