

Ingredient Terms and Conditions

1. **TERMS.** The sale of the product described in the contract or invoice of which these terms and conditions are a part (or are on the face hereof) (PRODUCT.) by The NutraSweet Company or its subsidiaries (SELLER.) to the buyer identified in the attached contract or invoice (BUYER.) is governed by the following terms and conditions. Seller expressly rejects any additional or different terms or conditions proposed by Buyer.
 2. **FORCE MAJEURE.** Either party's failure to perform its obligations hereunder (except to make payments hereunder) shall be excused to the extent and for the period of time such nonperformance is caused by an event of force majeure, including but not limited to war, invasion, fire, explosion, flood, riot, strikes, acts of God, delays or defaults of carriers, energy shortage, inability to obtain raw materials, failure or curtailment in Seller's usual sources of supply, acts of government, its agencies or instrumentalities, or contingencies or causes beyond such party's reasonable control.
 3. **PRICE.** Unless otherwise agreed to in writing by the parties (for example as set forth on a contract or invoice attached hereto), Seller's prices at the date of shipment shall prevail over any price specified in Buyer's order and all prices are EX-Works (Incoterms 1990) Seller's warehouse or manufacturing facility nearest Buyer's location. Seller reserves the right to change its selling prices upon thirty (30) days' written notice to Buyer. In the event prices are increased by Seller, Buyer may within ten (10) days of receiving notification of a price increase, terminate the agreement by written notice to Seller, such termination to be effective thirty (30) days after receipt of such notice by Seller. Seller will use commercially reasonable efforts to have shipments made in accordance with any timely instructions of Buyer or estimated dates provided in writing to Seller. Title to, and risk of loss of, any shipment hereunder originating in the U.S. which is to be delivered within the U.S. will pass to Buyer at Seller's warehouse or manufacturing facility.
 4. **PAYMENT AND TERMINATION.** Unless otherwise stated in writing by Seller, the price for Product is payable only in U.S. currency and payment is due to Seller within thirty (30) days of the date of invoice. Any amounts not paid when due will incur interest from the date due until paid at an annual rate equal to 3% over the prime rate in effect at Citibank N.A., New York, New York on the date such payment was due. Seller reserves the right, among other remedies, either to terminate the contract or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment or invoice where same becomes due. Should Buyer's financial condition become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for Product previously delivered.
 5. **WARRANTIES.**
 - A. **BY SELLER.** Seller hereby warrants to Buyer with respect to Product that:
 - (a) It has good and marketable title to Product shipped to Buyer hereunder;
 - (b) At the time of shipment to Buyer, Product will meet Seller's then current specifications; and
 - (c) For Product sold as a food ingredient, at the time of shipment to Buyer, Product will not be adulterated or misbranded within the meaning of the United States Food, Drug and Cosmetic Act or any of the regulations thereunder.
- THE WARRANTIES SET FORTH IN THIS SECTION 5(A) ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, COLLATERAL, STATUTORY OR OTHERWISE, AND WHETHER IN CONTRACT, TORT OR OTHERWISE. SALE OF PRODUCT IS MADE ON THE UNDERSTANDING THAT THERE ARE NOT ANY EXPRESS OR IMPLIED WARRANTIES THAT PRODUCT DELIVERED HEREUNDER WILL BE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE.**
- B. **BY BUYER.** If Product is L-Phenylalanine or another chemical intermediate, Buyer hereby warrants to Seller that Buyer shall use Product as a chemical intermediate and Product will be further processed before resale by Buyer.
 - C. **LIMITED REMEDY.** Except as provided in Section 8A with respect to third party claims the exclusive remedy of Buyer arising out of breach of the above warranties will be replacement or credit, at Seller's option.
6. **LIMITATION ON CLAIMS FOR NON-CONFORMING PRODUCT.**
 - A. **CLAIMS.** All claims that any shipment hereunder does not conform to the above warranties will be waived by Buyer with respect to such shipment unless written notice is given to Seller by Buyer accompanied by a sample of the alleged non-conforming Product within thirty (30) days after Buyer's receipt of the shipment. Buyer shall not conduct any post sales audit of compliance with any terms and condition of sale and hereby waives any claims resulting therefrom unless such audit and claim are completed within two years of the date of the relevant order.
 - B. **REPLACEMENT OR CREDIT BY SELLER.** Seller will notify Buyer within thirty (30) days after receipt of Buyer's notice provided pursuant to Section 6 above whether Seller accepts Buyer's claim. If Seller accepts such claim, it will instruct Buyer either to return the shipment or destroy it, and Buyer will promptly comply with such instruction at Seller's expense. Seller will promptly replace any such Product at its own expense on the same shipping terms as the original shipment or issue a credit note to Buyer for such shipment including shipping charges paid by Buyer.
7. **LIMITATION OF LIABILITY.** Seller will not in any event be liable to Buyer, to Buyer's affiliates, or to Buyer's franchisees, co-packers, bottlers or distributors (if any) for special, indirect or consequential damages (including but not limited to lost profits, manufacturing costs, damage to goodwill, or loss of business), or product recall costs whether based on the use of Product or any goods incorporating Product (whether or not Product involved conforms to Seller's specifications and warranties set forth herein), or on Seller's late delivery or non-delivery of Product.
8. **INDEMNITY.**
 - A. **IN FAVOR OF BUYER.** Seller will indemnify, defend and hold harmless Buyer, its affiliates and their respective officers, directors, employees, agents and representatives from and against liability, damage, loss, cost or expense (including reasonable attorney's fees and costs) arising out of any third party claims or suits resulting from (i) Seller's negligent act or omission or breach of warranty in the manufacture or sale of Product hereunder; and (ii) Seller's infringement of any third party intellectual property right(s) resulting from Seller's manufacture, importation or sale of Product hereunder.
 - B. **IN FAVOR OF SELLER.** Buyer will indemnify, defend and hold harmless Seller, its affiliates and their respective officers, directors, employees, agents and representatives from and against any and all liability, damage, loss, cost or expense (including reasonable attorney's fees and costs) of any kind or nature whatsoever arising out of any third party claims or suits resulting from (i) Buyer's negligent act or omission in connection with the purchases, storage, use sale, shipment, promotion, or distribution of Product or of any goods (including their manufacture and sale) in which Product is incorporated; (ii) product liability claims relating to the manufacture, promotion or sale of Buyer's goods incorporating Products; and (iii) claims of contributory infringement or inducement of infringement against Seller based on infringement by Buyer of any third party intellectual property right(s) covering Buyer's goods incorporating Product, including all materials or intermediates produced or used in their manufacture (excluding Product) or method(s) for its manufacture or use.
 - C. **NOTICE OF CLAIM.** Promptly after receiving notice of any claim or lawsuit to which this Section 8 applies, the party seeking to be indemnified will notify the other party in writing, and the party so notified will immediately assume responsibility at its sole expense for the handling and defense of such claim or suit on behalf of the party entitled to indemnity. The parties will fully cooperate with each other in such defense.
9. **TAXES.** Buyer will pay all sales, revenue, excise or other federal, state, local or foreign taxes (including value added and consumption taxes) and all import or export duties payable with respect to any shipment hereunder, excluding Ad Valorem taxes of Seller and taxes based on Seller's net income.
10. **GOVERNING LAW.** This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Illinois, U.S., except any such law mandating the application of the law(s) of a different jurisdiction.
11. **LAW VIOLATION.** If any provision hereof is, or becomes, a violation of any law, rule, order or regulation issued thereunder, Seller shall have the right, upon notice to Buyer, to cancel such provision without effect upon the other provisions, or to cancel further deliveries in their entirety.
12. **INTELLECTUAL PROPERTY.**
 - A. **PATENTS.** Seller warrants that the sale of Product will not infringe the claims of any United States Patent covering Product itself, but in the event that it is alleged that such sale constitutes infringement of such patent, then Seller's liability to Buyer shall:
 - (a) be limited to the defense of such infringement actions and the payment of damages awarded therefore by a court of competent jurisdiction from which no appeal is or can be taken, or the settlement of such action, as Seller shall elect, and
 - (b) arise only if Buyer promptly gives Seller written notice of such claim and full authority, information and assistance for the defense and/or settlement of such claim.
- This Section 12(A) states the entire liability of Seller with respect to patent infringement by said materials. Seller does not warrant against infringement by reason of any use of the material or of its combination with any other material or in the operation of any process. Seller reserves the right to suspend deliveries hereunder, or to terminate this contract, if Seller believes that the manufacture and/or sale by Seller, or the use by Buyer, of any Product infringe any Patent.
- B. **TRADEMARK USAGE.** Buyer agrees that, if Seller grants Buyer any right to use any Seller trademark, its use of the Seller trademarks and the advertising and packaging of Buyer's goods will be in accordance with Seller's policies and procedures with respect to the use of any of Seller's trademarks as provided to Buyer from time to time. Buyer will not grant rights of any kind to Seller's trademarks to any third party. In no event shall Buyer use Seller's trademarks on tabletop products.
13. **NO RIGHT OF SET-OFF.** Buyer waives any right it now has or later acquires to set off any amount due from Seller or its affiliates against amounts owed by Buyer hereunder.
14. **ALLOCATION.** If Seller determines that its ability to supply the total demand for Products, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of Products, is hindered, limited or made impracticable, Seller may allocate its available supply of Products or such material (without obligation to acquire other supplies or any such products or material) among itself and its customers on such basis as Seller determines to be equitable, without liability for any failure of performance which may result.
15. **ASSIGNMENT.** The terms, conditions and obligations of this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Buyer shall not (by operation of law or otherwise) transfer, delegate, or assign its rights, duties or obligations hereunder or any part thereof to any other person or entity, without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed) and any attempted transfer, delegation or assignment without such consent shall be void. A "change of control" of the ownership of Buyer shall be deemed an assignment hereunder. For the purposes of this Section 15, a "change of control" means a change in ownership of 20% or more of the stock, or a sale of a material amount of the assets of Buyer. Seller may transfer or assign all or any part of its rights, duties or obligations hereunder to an Affiliate or a successor to the business of Seller that manufactures or sells Product without the consent of Purchaser.
16. **SEVERABILITY.** The provisions contained herein are severable and the contract or invoice of which these terms and conditions are a part (or are on the face hereof) shall be interpreted as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions shall be enforced to the extent valid and enforceable. If any applicable and binding law or rule of any jurisdiction renders any provision of the contract or invoice of which these terms and conditions are a part (or are on the face hereof) unenforceable, the parties hereto agree to modify, or make any modification made or ordered by any court, arbitrator, or governmental agency of, such invalid or unenforceable provision, to the extent required to be valid and enforceable in such jurisdiction. Such modifications to the Agreement shall be effective only in such jurisdiction and the contract or invoice of which these terms and conditions are a part (or are on the face hereof) shall be enforced as originally made and entered into in all other jurisdictions.