

## STANDARD TERMS AND CONDITIONS

### 1 PREAMBLE.

- 1.1 The Purchase Agreement attached hereto is subject to the terms and conditions set forth below. Acceptance of the Purchase Agreement is limited to the Terms and Conditions set forth herein. Additional terms on Seller's form shall be deemed a material alteration hereof and are therefore objected to and rejected. As used in these Terms and Conditions "materials" means any materials, machinery, equipment, article, item, services or work provided for in the Purchase Agreement. "Seller" means the person, firm or corporation who will provide materials to Purchaser in accordance with the Purchase Agreement. "Purchaser" means Perdue Farms Inc.

### 2 TERMINATION FOR CAUSE.

- 2.1 Purchaser may terminate the Purchase Agreement for cause in the event of a default by Seller. In such event, Purchaser shall not be liable to Seller for any amounts due in respect of the materials related to such default. If it should be determined that the Purchaser has improperly terminated the Purchase Agreement for default, such termination shall be deemed to be by Purchaser without cause.

### 3 TERMINATION WITHOUT CAUSE; EFFECT OF TERMINATION

- 3.1 In addition to all the other rights which Purchaser may have to cancel the Purchase Agreement, with cause, Purchaser shall have the further right to terminate any work hereunder without cause, in whole or in part, at any time by written or telegraphic notice. If the parties cannot agree within a reasonable time upon the amount of fair compensation to the Seller for such termination, (a) Purchaser will pay the contract price for all articles completed in accordance with the Purchase Agreement and not previously paid for, (b) Purchaser will pay a fair and proper portion of the contract price for articles in process, and (c) Purchaser will pay Seller's costs for all materials acquired or contracted for by Seller for the purpose of filling the Purchase Agreement which Seller is unable to cancel or return. Any articles or materials paid for in the preceding sentence shall be delivered by Seller in accordance with Purchaser's directions. Should Purchaser so desire, cancellation charges shall be subject to Purchaser's audit. In addition, either party shall have the right to cancel the Purchase Agreement in the event that the other party becomes bankrupt or insolvent or makes an assignment for the benefit of the creditors.

### 4 WARRANTY GENERAL MERCHANTABILITY AND SPECIFICATIONS

- 4.1 Seller expressly warrants that all materials furnished hereunder shall be of merchantable quality and free from any defects in workmanship or material. If Seller has been informed of the use of the products, Seller also warrants that the items furnished hereunder are suited and appropriate for such use. In addition, the materials furnished under the Purchase Agreement will conform to applicable specifications, drawings, samples or other descriptions given. Seller shall extend all warranties it receives from its vendors to Purchaser, and Seller's warranty shall extend to Purchaser's customers. This warranty is in addition to all warranties provided under the law.

### 5 REMEDY ON DEFECT OR FAILURE

5.1 In the event of any such defect or failure, Seller, at Purchaser's option, shall, without any increase to the contract price, either replace such materials or correct such defects or failure; provided, however, that Purchaser reserves the right to reject any or all materials which do not fulfill the warranties set forth above and to pursue any other remedy available to Purchaser. Such rejected materials shall be removed at the expense of Seller promptly after notice of rejection.

## 6 PRICE GUARANTY

6.1 Seller warrants that the prices quoted in the Purchase Agreement are the lowest prices at which those or similar articles are sold by the Seller to other customers, and in the event of any price reduction between execution of the Purchase Agreement and delivery of the goods, Purchaser shall be entitled to such reduction.

## 7 PURCHASER DELAY DELIVERY

7.1 Purchaser may delay delivery or acceptance of goods in the event of any unforeseen event. Seller shall hold the goods pending Purchaser's direction, and Purchaser shall be liable only for direct increased costs incurred by the Seller by reason of Purchaser's instructions.

## 8 CHANGES TO PURCHASE AGREEMENT

8.1 Purchaser shall have the right to make changes in the Purchase Agreement at any time and Seller agrees to accept such changes. In the event such changes result in additional costs, Purchaser shall make an equitable adjustment in the purchase price provided such additional costs are itemized for Purchaser by Seller within thirty days of the change.

## 9 WARRANTY FURTHER SPECIFICATIONS

9.1 Seller warrants, guarantees and certifies to Purchaser, its subsidiaries, affiliates, divisions and representatives and any other person or entity affected thereby (hereinafter referred to collectively as "Affiliates") that all materials processed for or purchased from time to time by or on the order of Purchaser or its Affiliates from Seller: (i) are and will at time of delivery by Seller be in compliance with all applicable federal, state and local laws, rules, regulations, best business practices and other legal requirements (including, but not limited to, those relating to health, safety, security, inspection, pesticides, labeling, flammability, price discrimination, wage-hour, labor, conditions of employment, adulteration, misbranding, color additives, hazardous substances and packaging) under, including, but not limited to, the Federal Food Drug and Cosmetic Act, the Federal Fair Labor Standards Act, the Federal Poison Prevention Packaging Act and the Federal Consumer Product Safety Act; (ii) are good and merchantable and meet the specifications of Purchaser under which they are to be produced and sold including, without limitation, the specifications, if applicable, set forth in Perdue's Manufacturing Systems Electrical/Data Acquisition (DAQ) Standards, as amended from time to time; (iii) are processed and packaged pursuant to Purchaser's standards and specifications, and are fit for any particular purpose for which they are intended; (iv) are free and clear of all liens, encumbrances, security interests and claims; and (v) do not violate, and the use or resale thereof by Purchaser or its Affiliates shall not violate, any patent, trademark or copyright. Seller also warrants, guarantees and certifies to Purchaser that all edible materials intended for human consumption will be tested for pesticide residual, and that no edible materials intended for human consumption shall be sold by Seller to Purchaser or its Affiliates if such tests indicate any presence of pesticide residual that exceeds the applicable recommended action levels set forth in Title 40, Part 180 of the Code of Federal Regulations (40 CFR 180).

## 10 WARRANTY INTELLECTUAL PROPERTY

10.1 Seller warrants that the sale or use of the materials furnished hereunder will not infringe or contribute to the infringement of any patents, trademarks or trade names or embody any unauthorized use of trade secrets either in the United States or in foreign countries, and Seller covenants and agrees to indemnify and hold harmless Purchaser and its customers and the users of its products against any and all claims, demands, expenses and liabilities arising from or attributable to such infringement or unauthorized use of trade secrets. Seller shall have the right and, upon Purchaser's request, Seller shall have the obligation to defend at its own expense and at no expense to Purchaser any such claims or demands, in which case Purchaser may also be represented by its own counsel. If the sale or use of the materials is enjoined, Seller at its own expense and at Purchaser's option shall (1) procure for the Purchaser and its customer the right to continue using and selling the materials, (2) modify the materials so as to be non-infringing, (3) replace the materials with non-infringing material, or (4) refund the purchase price to Purchaser.

## 11 DAMAGES

11.1 Seller agrees to pay Purchaser all direct, indirect or consequential damages (including, but not limited to, loss of use or loss of profits) which it may sustain as the proximate result of the failure of the materials to comply with the warranties, guarantees and certifications contained herein; provided, however, that Purchaser within 90 days of its acquiring knowledge of any defects in the materials must notify Seller in writing of the failure of the materials to comply with the warranties, guarantees and certifications contained herein. Seller agrees that such notice shall satisfy the notice requirements of any applicable statute, regulation or rule.

## 12 INDEMNITY

12.1 In addition to the rights and remedies provided above and in addition to any other rights which Purchaser might have at law or in equity, Seller agrees at its own expense to indemnify and hold harmless and defend Purchaser from any complaints, claims or lawsuits: (i) arising out of or resulting from facts which constitute a violation of the warranties, guarantees and certifications given to Purchaser by Seller or which otherwise constitutes a breach by Seller of the terms contained herein; (ii) arising out of or resulting from the acts or omissions of Seller, its agents or employees in the furnishing, installation, erection, repair, adjustment or operation of the materials covered hereunder; or (iii) which alleges that the production of the materials was negligent. Seller further agrees to indemnify and hold Purchaser harmless from any and all losses, damages, liabilities or expenses, including attorney's fees, incurred, agreed to or awarded as a result of any such complaint, claim or lawsuit; provided, however, that indemnification under this paragraph is conditioned upon Seller receiving prompt notice of any such complaint, claim or lawsuit within 90 days of such claims being made to Purchaser.

## 13 INSURANCE

13.1 Seller agrees that at all times relevant to materials produced or sold hereunder Seller will maintain in effect, with a financially responsible insurer authorized to transact business in the United States, Commercial General Liability insurance, including product liability and completed operations coverage and contractual liability coverage, with combined single limit of not less than \$3,000,000, and will furnish to Purchaser a certificate of such coverage and evidence of the same continuing in effect. Purchaser shall be named as an additional insured under the above coverages.

#### 14 RECALLS

- 14.1 In the event Purchaser or Seller reasonably determines it is necessary to recall or retrofit any materials produced or provided by Seller for Purchaser for any reason bearing on their safety or for any non-conformance of the materials with Purchaser's specifications and standards in effect at the time such materials are produced, Seller agrees to comply with recall and/or retrofit procedures reasonably established from time to time by Purchaser. Furthermore, Seller agrees to bear all costs and expenses incurred by it in complying with such recall or retrofit procedures.

#### 15 WARRANTY COMPLIANCE WITH APPLICABLE LAWS

- 15.1 In addition, Seller warrants that all materials purchased hereunder will conform with all applicable city, state and federal laws, ordinances and regulations. Further, Seller warrants that all materials purchased hereunder will conform in every respect to the requirements of OSHA and EPA. Seller will defend and save Purchaser harmless from loss, cost or damage by reason of any actual or alleged violation of any such law, ordinance or regulation.
- 15.2 Affirmative Action Notice: vendors and subcontractors are notified that they may be subject to the provisions of: 29 CFR Part 471; 41 CFR Section 60-1.4(c); 41 CFR Section 60-250.4 and/or Section 60-300.5; and 41 CFR Section 60-741.5 with respect to affirmative action program and posting requirements.

#### 16 RISK OF LOSS

- 16.1 Risk of loss shall remain Seller's until the materials have been delivered to Purchaser and have been inspected and accepted, and the Seller shall have the responsibility of insuring the materials against transportation loss and any other loss or damage until the materials have been delivered to Purchaser and have been inspected and accepted.

#### 17 COUNTING; INSPECTION

- 17.1 All materials purchased hereunder shall be subject to counting, inspection and/or testing by Purchaser at all reasonable times and places, including inspection at Seller's plant before, during and after manufacture. If the Purchase Agreement specifically requires Purchaser's inspection, Seller will notify Purchaser 10 days in advance of final test or inspection. Purchaser's inspection or failure to inspect shall in no way limit or diminish any responsibilities or liability of Seller with respect to such materials, including any warranty or guarantee contained above, or imply acceptance by Purchaser.

#### 18 ENTIRE AGREEMENT

- 18.1 The Purchase Agreement (including the schedules attached thereto), these Terms and Conditions and any Rider attached to the Purchase Agreement constitute the entire agreement between the parties and can only be modified by a writing signed by authorized representatives of both parties and such writing shall specifically identify that a term or terms in the Purchase Agreement, these Terms and Conditions or in any Rider attached to the Purchase Agreement is or are being superseded by a term or terms set forth in the aforementioned writing. No part of the Purchase Agreement may be assigned or subcontracted without the prior written approval of the Purchaser. Any monies due Purchaser from Seller can be set off from any monies due Seller from Purchaser whether or not under the Purchase Agreement. Purchaser's failure to insist on any right shall not operate as a waiver of any other right. Time is of the essence with respect to the Purchase Agreement.

## 19 SPECIFIC DELIVERIES

19.1 Deliveries must be made within the time stated in the Purchase Agreement. Seller will immediately notify Purchaser if delivery cannot be made on time. If delivery cannot be made on time, Purchaser may cancel the Purchase Agreement and purchase elsewhere, and may charge Seller for any loss incurred as a result thereof except that Seller will not be charged for deliveries which cannot be timely made due to causes beyond its control. Acceptance by Purchaser of a late delivery of either the whole or a part of any order shall not constitute a waiver of Purchaser's claim for any damage which the late delivery may have caused. Materials delivered in error or not in accordance with specifications or codes, or in excess of the quantity called for will be returned at Seller's expense. Substitution under this Purchase Agreement will not be permitted except on specific written authority of Purchaser.

## 20 FREIGHT

20.1 If freight is allowed or purchase made at delivered price, freight charges must be PREPAID and evidence of the paid freight bill shall be submitted with the invoice. No charge will be allowed for loading, packing, boxing, crating or cartage, unless stated herein, but damage to any materials not packed to insure proper protection will be charged to Seller.

## 21 CONFIDENTIALITY

21.1 All drawings, specifications, technical information, experience, or knowledge, or similar confidential information disclosed by Purchaser to Seller, together with documents containing such material are the confidential property of the Purchaser. Seller shall not disclose such confidential property to its employees or to any third party except on a need-to-know basis to enable Seller to furnish the materials that are the subject of the Purchase Agreement, and the Seller shall take all reasonable steps to maintain the confidentiality of all such confidential information.

## 22 PRIORITY

22.1 In the event of conflict among documents referred to in the Purchase Agreement, the order of priority shall be: (1) the terms appearing in the Purchase Agreement; (2) any special conditions supplied by Purchaser; (3) these Terms and Conditions; (4) any technical specifications supplied by Purchaser; (5) any drawings supplied by Purchaser; (6) any remaining documents referred to in the Purchase Agreement.

## 23 SAFETY QUALIFICATION

- 23.1 If applicable, Contractor agrees to maintain, at Contractor's expense, a subscription with ISNetworld ([www.ISNetworld.com](http://www.ISNetworld.com)) for the duration of the Agreement. Contractor shall also furnish ISNetworld with any information requested by ISNetworld in connection with ISNetworld's evaluation of the Contractor.
- 23.2 In the event that Contractor's ISNetworld rating falls below A, Contractor shall promptly take all steps necessary to improve the rating so that it is equal to an A. If the Contractor does not improve such rating to A within 30 days after the issuance of the rating by ISNetworld, Contractor shall be considered in material breach of the Contract.
- 23.3 Perdue makes no representation about the quality of services being performed by ISNetworld. Perdue's use of ISNetworld in connection with the Project shall not constitute or be construed as Perdue assuming responsibility or liability for safety under the Agreement or at law, and does not relieve Contractor from full compliance with its legal and contractual obligations.

ISNetworld is an independent contractor, and any acts or omissions by ISNetworld shall not be considered an act or omission of Owner. ISNetworld shall not, for any purpose, be or be treated as or deemed to be an agent, partner or representative of or joint venture with Perdue.

24 GOVERNING LAW

- 24.1 All matters relating to the validity, meaning and performance of the Purchase Agreement shall be decided in accordance with Maryland law.