



33440 Western Avenue
Union City, CA 94587
510.489.8600
510.489.9797 fax

PURCHASE ORDER TERMS AND CONDITIONS

The Terms & Conditions set forth below govern the purchase order ("PO") by New Horizon Foods, Inc. or any of its subsidiaries or affiliates (collectively, "NHF") of any goods (the "Products") and are exclusive of any additional or contrary provisions contained in any invoice or other communication from the supplier of the Products ("Supplier") or any third party. Any inconsistency or conflict between the provisions of these Terms & Conditions and the provisions set forth in any invoice sent by Supplier or in any other document or agreement between Supplier and NHF shall be resolved in favor of these Terms & Conditions.

1. ACKNOWLEDGMENT OF ORDER AND AGREEMENT. Supplier may accept this PO by signing and returning the PO, sending an acceptable confirmation by electronic means, without change, or by providing the Products in whole or in part. If Supplier has not otherwise agreed to these Terms & Conditions, Supplier's acceptance of this PO will constitute Supplier's agreement to these Terms & Conditions.

2. GENERAL INSTRUCTIONS. Mail invoice to the address on the front of this PO. NHF's PO number must appear on all invoices, packaging, correspondence, and shipping papers. If Supplier is unable to fulfill the terms of this PO in any respect, Supplier must immediately notify NHF in writing. Time is of the essence with respect to Supplier's delivery and performance.

3. PRICE. Supplier will invoice the Products at the price shown on this PO or if no price is shown then at the lowest prevailing market price. All monetary amounts are expressed in U.S. dollars unless this PO specifies another currency. Supplier will not charge for boxing, packing, crating, energy, fuel or other charges. Supplier's prices include any customs duty.

4. PAYMENT TERMS. NHF will pay Supplier's invoices within the time periods specified on this PO or if no payment terms are specified, NHF will pay on or before the 45th day after NHF receives the invoice. Supplier must notify NHF that a payment does not comply with this PO within 60 days after Supplier receives payment or the claim (including any interest) will be waived.

5. CHANGES OR CANCELLATION. NHF may change, suspend or cancel performance at any time by written notice. Supplier's expenses will be prorated based on performance to the date of change, suspension or cancellation.

6. TAXES AND FEES. Supplier is responsible for payment of all taxes or fees associated with the manufacture, sale, processing or provision of the Products or any component of the Products except as required by law or otherwise agreed. Supplier must separately identify on invoices any taxes NHF is obligated to pay. Prices will not include taxes for which Supplier or NHF can obtain an exemption.

7. DELIVERY AND RISK OF LOSS. Delivery of Products will occur at NHF's premises and Supplier will be responsible for any delivery cost unless otherwise stated on this PO. Risk of loss of Products will pass to NHF upon delivery to NHF's premises unless otherwise stated on this PO. Supplier will bear the risk of loss on rejected Products after receiving NHF's notice of rejection.

8. INSPECTION AND REJECTION. All Products will be subject to NHF's inspection and approval at NHF's premises within a reasonable time after delivery. NHF may reject Products not in accordance with the PO or Supplier's warranties (expressed or implied). Any Products not in full compliance with this PO may, at NHF's option, be (i) returned to Supplier at Supplier's expense for credit to NHF at the full price plus all costs and expenses associated with the return or (ii) scrapped by NHF, with Supplier's consent and at Supplier's expense, in which case NHF will be relieved of any payment obligations with respect to the Products. NHF will calculate damages to Products and may deduct the amount from Supplier's invoice. If NHF has paid the invoice, Supplier will promptly reimburse the amount of damages to NHF.

9. REPRESENTATIONS AND WARRANTIES. Supplier represents and warrants that the Products will be free from defects in materials and workmanship, will conform to applicable specifications, will comply with all applicable laws, rules, regulations, codes and ordinances of the country(ies) of manufacture and of delivery, will be merchantable, and will be fit for the purpose for which they were made, advertised, or intended. Supplier warrants that it is aware of the uses NHF and its customers intend for the Products and the Products are sufficient for those intended uses. Supplier does not warrant Products that have been subjected to misuse or abuse. These warranties are in addition to all express or implied warranties provided by law. Any services provided will be performed (i) in a professional and workmanlike manner and (ii) in compliance with all applicable laws, rules, regulations, codes and ordinances, and all of Purchaser's safety and other requirements communicated to Vendor; All warranties will survive acceptance and payment and will run to NHF and its customers.

10. TERMINATION. NHF may terminate this PO for any reason and at any time upon at least 5 calendar days written notice to Supplier, without penalty or further obligation. If NHF terminates because of Supplier's default, then in addition to remedies provided in this PO, NHF will be entitled to all remedies provided by law, INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES. Payments to Supplier under this PO are the sole and exclusive remedy available to Supplier if Buyer terminates.

11. LIENS. Under no circumstance will Supplier be entitled to any lien encumbering any Products delivered to NHF.

12. FORCE MAJEURE. Each party will be excused from performance under this PO if it is unable to perform as a result of fire, flood, acts of God or similar elements of nature, war, embargo, riot, serious civil disorder, terrorist attack, revolution, national strike (individually and collectively referred to as "force majeure") and such nonperformance could not have been prevented by reasonable precautions. Force majeure will not include economic hardship, changes in market conditions, insufficiency of funds, unavailability of supplies, or labor difficulties of Supplier. If either party is unable to perform its obligations under this PO because of force majeure, then the party affected by force majeure will give written notice with explanation to the other party immediately. The affected obligations will be suspended only during the continuance of the force majeure if the affected party is acting with due diligence to recommence performance. If Supplier is affected by force majeure, NHF may cancel any orders for Products that are subject to the force majeure and purchase from a third party.



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PURCHASE ORDER TERMS AND CONDITIONS CONTINUED

13. COMPLIANCE. Supplier will indemnify, defend and hold NHF harmless for any expenses, including attorneys' fees and fines, resulting from Supplier's failure to comply with any laws or regulations applicable to Supplier or the Products .

14. ASSIGNMENT. Supplier may not assign its rights (including monies due or to become due), subcontract or delegate its obligations under this PO without NHF's written consent. Any attempt to do so will be null and void and NHF will have the right to terminate this PO. If this PO is properly assigned, the terms will bind and benefit the parties and their representatives, successors and assigns. A proper assignment will not release Supplier of their liability under this PO.

15. APPLICABLE LAW. These Terms & Conditions shall be governed by the laws of the State of California. With respect to any dispute or claim arising hereunder, Customer agrees and consents to jurisdiction of and exclusive venue in any state or Federal court located in Alameda County, CA.

16. MODIFICATION; WAIVER. No amendment to these Terms & Conditions will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or nonperformance of an obligation hereunder will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute waiver of satisfaction of any other condition or nonperformance of any other obligation. Purchaser's failure or delay in exercising any right or remedy with respect to the Order will not operate as a waiver of that right or remedy. Any waiver of a right or remedy must be in writing and signed by Purchaser

17. SEVERABILITY. If any provision hereof shall be determined to be illegal or unenforceable, the validity of the remaining provisions shall not be affected thereby. If any provision hereof is determined to be overbroad as written, that provision should be considered to be amended to narrow its application to the extent necessary to make the provision enforceable according to applicable law and enforced as amended.