

UPSTATE NIAGARA COOPERATIVE, INC.

("Seller")

TERMS AND CONDITIONS OF SALE

1. Acceptance of Terms and Conditions.

The Acceptance of the terms and conditions herein and/or attached hereto is an essential prerequisite to any contract of sale made by Seller. Such terms and conditions are an integral part of any quotation made by Seller and Sellers formal acknowledgment of any order made by Buyer. Acceptance of any goods manufactured and delivered hereunder shall constitute Buyer's acceptance of said terms and conditions. Unless specifically agreed to in writing by Seller, no terms or conditions stated by Buyer in its offer or acceptance shall be binding upon Seller if in conflict with, inconsistent with, or in addition to the terms and conditions contained herein or attached hereto. No oral agreement or other understanding shall in any way modify these terms and conditions.

2. Warranty Disclaimer.

EXCEPT AS MAY BE OTHERWISE PROVIDED IN WRITING BY SELLER, AND EXCEPT AS MAY BE REQUIRED UNDER THE FEDERAL FOOD, DRUG AND COSMETIC ACT, AS AMENDED, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS OF SELLER. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE. BEFORE PURCHASING, BUYER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE, AND BUYER ASSUMES ALL RISK AND LIABILITY THEREFOR. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. WHETHER SUCH DAMAGES ARE SOUGHT IN CONTRACT, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND SELLER'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS ON WHICH SUCH LIABILITY IS BASED.

3. Delivery.

Shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller will exercise its reasonable efforts to meet the shipment dates specified in an accepted order. However, in no event will Seller be liable for its failure to make delivery, any delay in making delivery of any loss or damage when such failure to deliver, delay, loss or damage results from any cause beyond Seller's reasonable control, including but not limited to fire, flood or other act of

God, strike or labor difficulty or disagreement, accidents at Seller's facilities, acts or requirements of government or civil authority, riot, war, embargo, truck or car shortage or other transportation delay or difficulty, or Seller's inability to obtain necessary labor, materials or manufacturing facilities because of any cause beyond Seller's reasonable control. In the event of such delay, the date of delivery shall be extended for a period equal to the time lost by reason of such delay.

4. Prices.

To the extent that the prices for products sold hereunder are not specified herein, the prices for the same, unless otherwise stated by Seller, shall be those in Seller's published price list in effect at the time of shipment.

5. Taxes.

Unless otherwise stated by Seller, Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise or other similar tax applicable to the sale of products hereunder shall be paid by Buyer, or in lieu thereof. Buyer shall provide Seller with a tax exemption certificate acceptable to taxing authorities. In the event that Seller shall pay such taxes prior to receipt of a tax exemption certificate, or in any event, Buyer shall, upon demand, reimburse Seller for such amounts.

6. Title and Risk of Loss.

Unless otherwise stated by Seller, title and risk of loss shall pass to Buyer at the time of delivery to the carrier, even though selected by Seller. This provision shall apply even if the price is quoted f.o.b. destination, c.o.d., etc.

7. Transportation.

Unless otherwise stated by Seller, delivery hereunder shall be made f.o.b. point of shipment, with transportation expenses paid by Buyer.

8. Cancellation.

No accepted purchase order may be modified except with Seller's written consent, nor may it be cancelled except with Seller's written consent and by payment to Seller of a sum equal to the total of out-of-pocket expenses incurred in connection with the purchase order, including but not limited to any charges made to Seller by suppliers for cancellation, plus reasonable sums for overhead expenses and lost profits, as determined by Seller.

9. Pre-shipment Samples.

In the event that any products are shipped to Buyer after Buyer has notified Seller that a pre-shipment sample of such products is acceptable and meets Buyer criteria for such products, Buyer will be deemed to have accepted, and may not reject, any products in such shipment if the products shipped are substantially similar in quality to the pre-shipment sample.

10. Terms and Payment.

Unless otherwise stated by Seller, terms of payment for shipments are net cash within ten (10) days from the date of invoice. Invoices may be submitted on partial shipments. Terms of payment on partial shipments are also net cash within ten (10) days and failure to make timely payments of invoices covering final or partial shipments entitles Seller at its option to withhold delivery of products ordered without liability. If shipments are delayed by Buyer, payment shall become due on the date when Seller is prepared to make shipment. If the work covered by contract is delayed by Buyer, payment shall be made based upon the purchase price and percentage of completion. Products held for Buyer shall be at the risk and expense of Buyer. Commencing sixty (60) days from the date of invoice, interest will be imposed on any unpaid amount owed to Seller at the rate of one and one-half percent (1 1/2%) per month compounded monthly.

11. Rejection and Return of Products.

Any products rightfully rejected and returned by Buyer to Seller will not be accepted by Seller and Buyer will not be entitled to a refund of the purchase price for said products (or, if Buyer has not yet paid Seller the purchase price, the Buyer shall pay Seller the purchase price for the products according to the terms contained herein) if such products are, not suitable for resale by Seller. For the purposes of this section and by way of example and not limitation, a product will not be suitable for resale if i) there has been any decrease in value of such product as a result of testing by Buyer, (ii) the packaging of such product whether tested or not, has been damaged or defaced in any manner, (iii) such product has been mishandled in any manner, causing damage to the packaging or product, or (iv) such product has been used.

12. Product Recall.

Buyer shall immediately recall any and all products of Seller upon the request of Seller. Buyer shall immediately notify Seller of any customer complaints regarding the products, or any inspections or other actions by governmental agencies regarding the products or any Buyer owned or operated facilities distributing the products resulting in adverse comment or a report of violation, and shall promptly deliver a copy of any such report, comment or complaint to Seller, as well as duplicates of any samples taken during said inspection or received from a customer. Further, Buyer agrees to establish appropriate procedures and keep appropriate records in order to be able to locate immediately any and all products of Seller delivered to Buyer. In the event there is a product recall, Seller shall not be liable to Buyer for any expenses or losses associated with such recall which exceed this purchase price of the recalled products and shall have no liability whatsoever unless the recalled products are returned to Seller as directed by Seller and at Buyer's, expense.

13. Security.

Seller reserves the right to require payment in advance or satisfactory security or guaranty that an invoice will be promptly paid when due if at any time Buyer's financial responsibility becomes impaired or unsatisfactory to Seller.

14. Compliance with Laws.

Buyer warrants that it shall comply with all Federal, State and local laws, regulations and ordinances affecting Seller. Seller makes no warranties with respect to compliance with laws.

15. Indemnification.

Buyer agrees to defend, indemnify and hold Seller harmless from any and all liability, loss, damage, cost and expense, including actual attorneys' fees, which Seller may suffer or incur arising from Buyer's labels, packaging, formulas or specifications, including but not limited to, actual or alleged patent, trademark or copyright infringement.

16. Assignment.

Buyer may not assign this contract or any of its rights or obligations hereunder without the prior written consent of Seller.

17. Costs and Attorneys' Fees.

Buyer shall pay all costs and actual attorneys' fees of Seller incurred in connection with the enforcement of the contract between the parties hereto.

18. Effect of Invalidity.

The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

19. Waiver.

No waiver by Seller of any breach of contract shall be deemed to be a waiver of any other or subsequent breach. All rights and remedies available to Seller shall be cumulative and in addition to any other rights and remedies provided herein or by law.

20. Governing Law, Jurisdiction and Venue.

The contract between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York and shall be deemed entered into at Seller's place of business. The parties agree that any controversy arising under the contract herein shall be determined by the Courts of the State of New York, and both parties hereby submit and consent to the jurisdiction of said Courts and agree that venue for any action arising hereunder shall lie in either Genesee, Erie or Monroe County, State of New York, as designated by Seller. New York Law Provides: All wholesale purchasers of milk buying from a licensed milk dealer shall provide not less than seven days' notice to their milk dealer supplier before changing suppliers. All wholesale purchasers shall make payment in full to their milk dealer supplier or satisfy their debts by an appropriate surety bond posted or other legal instrument of payment provided, less any legal rebates, discounts or other credit earned, before changing suppliers.

21. Equal Employment Opportunity and Non-Discrimination.

Buyer agrees to maintain non-segregated facilities and a policy of employment which does not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, handicap or status as a disabled veteran, a Veteran of the Vietnam era, a recently separated veteran or other protected veteran; and to further comply with all provisions of Executive Order 11246 of September 24, 1965, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act, including all amendments thereto and regulations thereunder, unless exempted. The equal employment opportunity requirements of 41 C.F.R. 60-1.4(a) (1-7), 41 C.F.R. 60-250.5(a-f), and 41 C.F.R. 60-741.5(a-f) are hereby incorporated by reference.

22. Executive Order 13201.

The Buyer agrees to comply with the provisions of 29 C.F.R. part 470, hereby incorporated by reference.