

INNOVATIVE FOOD PROCESSORS, INC.
Purchase Order General Terms & Conditions

The Purchase Order placed by the IFP representative is subject to the Terms and Conditions appearing hereon and, by accepting the purchase order, seller agrees to be bound thereby.

1. **ADDITIONAL OR DIFFERENT TERMS:**

- a. This order is buyer's offer to seller. Any reference to any offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the goods and services contained therein to the extent they do not conflict with those contained in this order.
- b. By acknowledging receipt of this order or by shipping goods or performing the services called for by this order, seller agrees to the terms and conditions of sale contained herein. It is agreed that any additional or different terms or conditions contained in any acknowledgment of this order by seller are waived by the seller and shall be deemed objected to by buyer without need of further notice of objection and shall be of no effect nor any circumstance binding upon buyer unless accepted by buyer in writing.

2. **PRICE:**

- a. If an exact price is not stated in this order, it is agreed upon that the goods or services shall be billed at the price last quoted or billed at the prevailing market price, whichever is lower. This order must not be billed at a higher price than last quoted or changed without buyer's specific authorization. Seller agrees that any price reduction made in the goods or services described in this order prior to the delivery or performance thereof will be applicable to this order. Seller represents that the price charged for the goods or services covered by this order is not more than the lowest price charged by the seller to buyers of a class similar to the buyer under conditions similar to those specified in this order.

3. **TAXES:**

- a. Unless otherwise provided herein, the purchase price set out herein shall be deemed to include any and all taxes and other governmental charges, now imposed or hereinafter becoming effective, upon the rendering, production, sale, shipment, use or erection of the materials or services specified in this order and seller agrees and acknowledges its duty to pay such taxes and other governmental charges without increasing the purchase price contained herein. Buyer shall be entitled to a credit or a refund in the event of any reduction or its cessation of any such taxes on governmental charges included in the purchase price.

4. **PAYMENT:**

- a. Seller shall mail invoice in duplicate showing order number, point of shipment, how shipped and cash discount to home office address shown on the face hereof. Payment due dates and any cash discount periods will be calculated from buyer's receipt of a proper invoice or from its receipt of acceptable materials or services, whichever occurs later, and not from the date of the invoice. On invoices returned for correction, the payment due dates and cash discount periods will be calculated from the date the buyer receives a corrected invoice.

5. **DELIVERY AND RISK OF LOSS:**

- a. Unless otherwise specified by buyer in writing, all goods are to be furnished F.O.B. point of destination. Seller agrees to pay all excess charges, and expenses resulting from failure to ship and route by cheapest way or as instructed by buyer, and to reimburse buyer for any such charges paid or expenses incurred by buyer for his failure to do so. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in this order or consented to in writing signed by buyer. Our count and weight are to be accepted as final on any shipments.
- b. Risk of loss on any goods furnished pursuant to this order shall remain on seller until such goods are received and accepted by buyer.

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6. INSPECTION:

- a. All shipments shall be received subject to buyer's right of inspection. Buyer reserves the right to reject any goods delivered in excess of quantity ordered (except for customary quantity variations), defective goods or goods which do not conform to buyer's specifications. Buyer may, and at seller's direction shall, return such goods to the seller, at seller's risk, and all transportation charges, both to and from the original destination, shall be paid by seller.

7. WARRANTIES:

- a. **Merchantability – Use – Description.** Seller expressly warrants that all goods and services covered by this order shall conform to the specifications, drawings, samples or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defects. At buyer's request, seller agrees to promptly replace or correct defects in any goods or services not conforming to the foregoing warranty without expense to the buyer, after reasonable notice to the seller, may make such corrections or replace such goods and services and charge seller for the cost incurred by buyer thereby or resort to any other remedy available to the buyer.
- b. **Patent – Trademarks.** Seller warrants that the use, consumption or sale of the goods ordered herein do not and will not infringe any patent, patent rights, invention rights, trademark, trade name or similar rights. Seller agrees, at its own expense, to defend any suit, proceeding, action, claim or demand against buyer, its successors, assigns, customers and users of its products and to indemnify and save harmless, those same persons against all costs, expenses, penalties, liabilities, fines, damages or losses, infringement of any patent, patent right, invention rights, trademark, trade name or similar herein, provided, however, that this indemnity shall not apply to any such damages, liabilities, claims, losses or expenses arising out of compliance by seller with specifications furnished by buyer.
- c. **General.** The above warranties shall be in addition to and not in limitation of any other warranties, express or implied, whether ordinarily extended by seller or established by statute or common law, or elsewhere set forth in this order. Buyer's failure to give notice to seller of any breach of warranty shall not discharge seller's liability thereof the breach. All warranties, express or implied, shall run and extend to buyer, its successors, assigns, customers and the users of its products.

8. GOVERNMENTAL REGULATION:

- a. Seller warrants that all products delivered pursuant to this order will have been produced, sold, priced, and delivered to buyer in compliance with all federal, state, municipal and local laws, rules, regulations, ordinances, and directions existing at the time of delivery. Seller agrees, upon request, to furnish buyer with the appropriate certificates showing such compliances. Specifically, but not by way of limitation, Seller warrants compliance with the following:
 - i. **Equal Employment Opportunity.** Unless this contract is exempted by rules and regulation of the Secretary of Labor issued pursuant to Section 201 of Execution Order No. 11246, as amended, there is incorporated herein by reference paragraphs 1 through 7 of the contract clause set forth in Section 202 of Execution Order No. 11246, as amended. Seller warrants that it shall not discriminate against any employee or person seeking employment because of age, sex, race, religion, color, disability, Vietnam era veteran status, or national origin.
 - ii. **OSHA.** Seller warrants that the goods and services supplied hereunder shall conform to all applicable provisions of the Williams-Steiger Occupational Safety and Health Act of 1970, together with all standards and regulations issued or adopted pursuant thereto as of the date the goods are delivered to or the services performed for buyer.

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- iii. Fair Labor Standards Act. Seller warrants that any goods delivered pursuant to this order will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended, and of all regulations and orders issued thereunder.
- iv. Walsh-Healey Public Contracts Act. Seller warrants that any goods delivered pursuant to this order will be produced in compliance with all applicable requirements of the Walsh-Healey Public Contracts Act, as amended, and of all regulations and orders issued thereunder.
- v. Adulterated, Misbranded, Hazardous Substances. Seller warrants, as of the time of delivery, that no articles shipped pursuant hereto will be (i) adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetics Act, or an article which may not, under the provisions of said Act, be then introduced into interstate commerce; (ii) adulterated or misbranded within the meaning of any federal, state or municipal food, drug, cosmetic, agricultural or similar law; or (iii) in violation of the Federal Hazardous Substances Law or any state hazardous substances or similar law.
- vi. Independent Contractor. This order is solely for the purchase of goods and of services and does not constitute seller the agent or subcontractor of buyer for any purpose; seller assumes all obligations under all social security or unemployment insurance legislation, old age benefits or workman's compensation laws, of the United States or of any state or other local governmental authority with respect to persons employed in the performance of services and/or production of the goods to be furnished under this order.
- vii. Employment of the Handicapped. Contractor certifies that he will take affirmative action to employ and advance in employment any qualified handicapped individual, defined as a person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment. Contractor further certifies that he will obtain a similar incorporation of the affirmative action clause and certification from his subcontractors prior to the award of any non-exempt subcontract exceeding \$2,500 covering the procurement of personal property and non-personal services (including construction).
- viii. Utilization of Minority Business Enterprises. Contractor agrees that as required by 41 CFR 1-1210-2, the following clauses are incorporated by reference and are included in every contract exceeding \$5,000 that he may receive from Buyer:
 - 1. It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of the Government contracts.
 - 2. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontractors to the fullest extent consistent with the efficient performance of the contract. As used in the contract, the term "Minority Business Enterprise" means a business, at least 50 percent of which is owned by minority group members or, in the case of publicly-owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of the definition, minority group members are Blacks, Spanish-speaking American Persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

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9. INDEMNITY:

- a. Seller shall defend and save buyer harmless against all damages, liabilities, claims, losses, costs, expenses, penalties, or fines, including reasonable attorneys' fees, for seller's failure to timely perform any of its obligations hereunder.

10. INSURANCE:

- a. Seller agrees to furnish acceptable certificates evidencing adequate Workmen's Compensation, public liability, and property damage insurance coverage when requested by Buyer. Seller shall defend, indemnify and protect Buyer against all claims, liabilities, losses and damages due to injury to or death of any person and damage to or loss of any property arising out of improper performance or negligent work under this Purchase Order or arising out of alleged defective material or workmanship in the goods or services provided by this Purchase Order, or out of any act or omission of an employee or agent of Seller and its subcontractors while on Buyer's property or in the course of their employment by Seller pursuant to the Purchase Order.

11. PROPRIETARY INFORMATION:

- a. All machinery, equipment, tools, jigs, dies, patterns, drawings, printing plates, negatives, formulas, specifications, samples, manufacturing data or other information furnished to seller by buyer or paid for by buyer for the fulfillment of this order ("proprietary information") shall be held by seller in strict confidence and used only in connection with the furnishing of services or goods hereunder. All such proprietary information shall remain the property of buyer, shall be carefully preserved and maintained by seller at its expense and shall be promptly returned to buyer or satisfactorily accounted for upon completion of this order or upon buyer's written demand. Seller, at its expense, shall insure all such proprietary information for the reasonable value thereof against loss or damage of any kind while in its possession.

12. ACT OF GOD – PRESUPPOSED CONDITIONS:

- a. Seller shall not be liable for any delay in delivery or failure to deliver any or all of the items covered by this Purchase Order in those instances where such delay in delivery or failure to deliver is occasioned by fire, explosion, flood, war, accident, interruption of or delay in transportation, labor trouble, governmental regulation or any other circumstances of like character beyond Seller's reasonable control. Notwithstanding anything to the contrary in this paragraph, Buyer shall have the option to demand that Seller perform after such delay upon written notice to Seller, within thirty (30) days if Seller's notification to Buyer of inability to perform due to the aforementioned conditions.
- b. Inability of Buyer to take shipment hereunder due to any of the aforementioned conditions or if occasioned by partial or complete suspension of operations at any of the Buyer's plants, shall not subject Buyer to any liability to Seller by reason thereof, but at Buyer's option, total quantity covered by this order may be reduced by the extent of omitted shipment or the specified delivery period extended by the time equal to that during which shipments are omitted.

13. TERMINATION:

- a. Buyer may terminate this order in whole or in part at any time. Unless otherwise authorized in writing by buyer, seller agrees to limit its purchase of material and its performance of services to that will reasonably be necessary to meet the delivery schedule contained herein and shall not order materials or perform services in advance of those reasonably necessary to meet the delivery obligations hereunder.

14. CANCELLATION:

- a. Time is of essence in this contract. Buyer reserves the right to cancel any lots or installments not timely delivered hereunder or it may, at its option, cancel the entire contract for such late deliveries or any other breach of this agreement.

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15. MERGER-INTERPRETATION:

- a. This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement except that any course of dealing between the parties shall be relevant to supplement or explain any term used in this agreement.

16. WAIVE-MODIFICATIONS:

- a. Any failure by buyer to enforce or require strict performance by seller of any terms or conditions of this order shall not constitute a waiver thereof by buyer and buyer may at any time avail itself of the remedies buyer may have for any breach of the terms hereof. The agreement which results from seller's acceptance of this order shall only be modified by a writing signed by both of the parties or their duly authorized agents except that buyer reserves the right to ultimately correct any clerical or typographical errors.

17. CHOICE OF LAWS:

- a. The validity, construction and enforcement of this agreement shall be determined and governed by the internal laws of the State of Minnesota.