

**COOPERATIVE ELEVATOR CO.
TERMS AND CONDITIONS OF SALE**

ARTICLE 1 - APPLICABILITY

1.1. **Parties.** These Terms and Conditions of Sale ("Terms") apply to the sale of all commodities, products, or other goods ("Goods") by Cooperative Elevator Co. ("Seller") to the buyer thereof ("Buyer"), as identified in the sales confirmation, sales contract, or scale ticket issued by Seller, into which these Terms are incorporated by reference.

1.2. **Acceptance of Terms.** The sales confirmation, sales contract, or scale ticket issued by Seller, as applicable, and these Terms (collectively, this "Agreement") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over and apply to the exclusion of any other terms Buyer seeks to impose or incorporate, whether under Buyer's general terms and conditions of purchase, master agreement, purchase order, offer to buy, confirmation, or otherwise (any of which, an "Order"), regardless whether, when, or in what format Buyer has submitted its Order or such terms, or which are implied by trade, custom, practice, or course of dealing. Fulfillment of Buyer's Order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms or this Agreement. Pursuant to MCL 440.2201(2), Buyer must object in writing to the contents of any sales confirmation provided by Seller within 10 days after it is received. Buyer's failure to object will be deemed to be an acceptance of all terms thereof, including without limitation these Terms. Without limiting the foregoing, submission of Buyer's Order to Seller (whether by telephone, by email, through electronic data interchange, or otherwise), Buyer's acceptance of Goods in whole or in part, or other assent by Buyer to these Terms and this Agreement shall constitute Buyer's agreement to and acceptance of these Terms and this Agreement, including without limitation provisions limiting warranties and liability of Seller, Buyer's assumption of risk, and all other terms of this Agreement, regardless of any contrary statements or representations not set forth in this Agreement. Any acceptance, confirmation, purchase order or the like sent by Buyer with respect to this Agreement or the sale of goods contemplated by it which states additional or differing terms from this Agreement shall be operative as an acceptance of all terms and conditions hereof, and any additional or differing terms sent by Buyer shall be deemed proposals for material modifications hereof, to which notice of objection is hereby given (which shall constitute Seller's objection to any such terms and conditions under MCL 440.2207(2)(c)), and the additional or differing terms shall not become part of any contract without Seller's express written agreement. Any such additional terms and conditions shall be deemed mere surplusage and shall not alter these Terms.

ARTICLE 2 - ORDER PROCEDURE

2.1. **Purchase Orders.** Buyer may initiate an Order in person, by telephone, facsimile, e-mail, or US mail, and must cause all Orders to contain the Basic Order Terms. By placing an Order, Buyer makes an offer to purchase the Goods pursuant to the terms and conditions of this Agreement, including the Basic Order Terms, and on no other terms. Except with respect to the Basic Order Terms, any variations made to the terms and conditions of this Agreement by Buyer in any Order are void and have no effect.

2.2. **Seller's Right to Accept or Reject Purchase Order.** Seller has the right, in its sole discretion, to accept or reject any Order. Seller may accept any Order by confirming the Order (whether by written confirmation, invoice or otherwise) or by delivering such Goods, whichever occurs first. No Order is binding on Seller unless accepted by Seller as provided in this Agreement.

2.3. **Cancellation of Individual Transactions.** Seller may, in its sole discretion, without liability or penalty, cancel any Individual Transaction: (a) if Seller determines that Buyer is in violation of its payment obligations or is in breach of this Agreement; or (b) pursuant to Seller's rights under Section 5.4. With the exception of Buyer's right to cancel any Purchase

Order pursuant to Section 3.3, Buyer shall have no right to cancel or amend any Purchase Order submitted by it.

ARTICLE 3 - SHIPMENT AND DELIVERY

3.1. **Shipment.** Unless expressly agreed to by the Parties in writing, Seller shall select the method of shipment of, and the carrier for, the Goods. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of an Order.

3.2. **Delivery.** Unless expressly agreed to by the Parties in any Individual Transaction, Seller shall deliver the Goods to the delivery location, using Seller's standard methods for packaging and shipping such Goods. All shipping and prices are Ex Works Seller's facility, unless otherwise set forth in this Agreement. All taxes, customs, duties, tariffs, and broker fees will be the sole responsibility of Buyer.

3.3. **Late Delivery.** Any time quoted by Seller for delivery is an estimate only. Seller is not liable for any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. However, if Seller delays shipment of all or any Goods for more than 30 days after the estimated delivery date (the "Delayed Shipment Date"), then Buyer may, as its sole remedy, cancel the related Purchase Order with respect to the delayed Goods by giving Seller Notice within 10 days of the Delayed Shipment Date. No delay in the shipment or delivery of any Goods relieves Buyer of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Goods.

3.4. **Packaging and Labeling.** Seller shall properly pack, mark, and ship Goods and provide Buyer with shipment documentation showing the Order number, Seller's identification number for the subject Goods, the quantity of goods in shipment and the number of cartons or containers in the shipment.

3.5. **Inspection.** Buyer shall inspect the Goods within seven days of receipt ("Inspection Period") of the Goods and either accept or, if such Goods are Nonconforming Goods or Excess Goods, reject such Goods. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods or Excess Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. If Buyer timely notifies Seller of any Nonconforming Goods or Excess Goods, Seller shall determine, in its sole discretion, whether the Goods are Nonconforming Goods or Excess Goods. If Seller determines that the Goods are Nonconforming Goods or Excess Goods, it shall, in its sole discretion:

a. if such Goods are Nonconforming Goods, (i) replace such Nonconforming Goods with conforming Goods, or (ii) refund the Price for such Nonconforming Goods, together with all shipping and handling expenses incurred by Buyer in connection therewith; or

b. if such Goods are Excess Goods, refund the Price for such Excess Goods, together with all shipping and handling expenses incurred by Buyer in connection therewith.

Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods or Excess Goods to Seller's facility located at Pigeon, Michigan. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the delivery location.

BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN SECTION 3.5.a AND SECTION 3.5.b ARE BUYER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS OR EXCESS GOODS, SUBJECT TO BUYER'S RIGHTS UNDER SECTION 9.3, WITH RESPECT TO ANY NONCONFORMING GOODS OR

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EXCESS GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 3.5.

3.6. **Limited Right of Return.** Except as provided under Section 3.5 and Section 9.3, Buyer has no right to return Goods purchased under this Agreement to Seller.

ARTICLE 4 - TITLE AND RISK OF LOSS

4.1. **Title.** Title to Goods ordered under any Individual Transaction passes to Buyer upon payment by Buyer for the Individual Transaction in full.

4.2. **Risk of Loss.** Risk of loss to all Goods ordered under any Order passes to Buyer upon Seller's tender of such units to the carrier for delivery.

ARTICLE 5 - PRICE AND PAYMENT

5.1. **Price.** Unless otherwise noted in the sales confirmation, sales contract or scale ticket, Buyer shall purchase the Goods from Seller at the prices set forth in Seller's price list in effect at the time that Seller accepts the related Order ("Prices").

5.2. **Shipping Charges, Insurance, and Taxes.** Buyer shall pay for, and shall hold Seller harmless from, all shipping charges and insurance costs. In addition, all Prices are exclusive of, and Buyer is solely responsible for, and shall pay, and shall hold Seller harmless from, all Taxes, with respect to, or measured by, the manufacture, sale, shipment, use or Price of the Goods (including interest and penalties thereon).

5.3. **Payment Terms.** Seller shall issue an invoice for each Individual Transaction. Unless otherwise noted in the invoice, sales confirmation, or scale ticket, Buyer shall pay all invoiced amounts due to Seller within 10 days from the date of such invoice, sales confirmation, or scale ticket, as applicable, except for any amounts disputed by Buyer in good faith pursuant to Section 5.5. Buyer shall make all payments in US dollars by check or wire transfer.

5.4. **Unsatisfactory Credit Status.** If Seller determines in its sole discretion that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Seller's other rights, Seller may without liability or penalty take any of the following actions: (a) accelerate all amounts owed by Buyer to Seller under this Agreement and any Individual Transaction; (b) on seven day's prior written Notice, modify the payment terms specified in Section 5.3 for outstanding and future Individual Transactions, including requiring Buyer to pay cash in advance; (c) cancel any previously accepted Orders; (d) delay any further shipment of Goods to Buyer; (e) on seven day's prior written notice, terminate this Agreement; or (f) any combination of the above.

No actions taken by Seller under this Section 5.4 (nor any failure of Seller to act under this Section) constitute a waiver by Seller of any of its rights to enforce Buyer's obligations under this Agreement including, but not limited to, the obligation of Buyer to make payments as required under this Agreement.

5.5. **Invoice Disputes.** Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed description of the dispute) within seven days from the date of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of disputes, and shall pay all undisputed amounts due under such invoices within the period set forth in Section 5.3. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts.

5.6. **Late Payments.** Except for invoiced payments that Buyer has successfully disputed, Buyer shall pay a time price differential on all late payments, calculated daily and compounded monthly at the rate determined by Seller in its sole discretion; provided, however, that such rate shall be at least 1.5% per month but no greater than the highest rate permissible under applicable Law, calculated daily and compounded monthly. Buyer shall also reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at Law (which Seller does not waive by the exercise of any rights under this Agreement), if Buyer fails to pay any undisputed amounts when due under this Agreement, Seller may (a) suspend the delivery of any Goods, (b) reject Buyer's Orders pursuant to the terms of Section 2.2, (c) cancel accepted Orders pursuant to the terms of Section 2.3, or (d) terminate this Agreement pursuant to the terms of Section 7.1.

5.7. **Purchase Money Security Interest.** Buyer hereby grants Seller a security interest in all Goods purchased hereunder (including Goods, Nonconforming Goods and Excess Goods) and the proceeds therefrom to secure Buyer's payment obligations under this Agreement. Buyer acknowledges that the security interest granted under this Section 5.7 is a purchase money security interest under Michigan law. Seller may file a financing statement for such security interest and Buyer shall execute any such statements or other documentation necessary to perfect Seller's security interest in such Goods. In the event Buyer does not execute such documents within a reasonable time, Buyer hereby grants Seller an irrevocable special power of attorney to execute such documents in Buyer's name. Seller is hereby authorized to file financing statements with respect to such lien.

5.8. **No Set-off Right.** Buyer shall not, and acknowledges that it will have no right, under this Agreement, any Order, any other agreement, document or Law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Seller or any of its Affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Seller or Seller's Affiliates, whether relating to Seller's or its Affiliates' breach or non-performance of this Agreement, any Order, any other agreement between (a) Buyer or any of its Affiliates and (b) Seller or any of its Affiliates, or otherwise.

ARTICLE 6 - COVENANTS

6.1. **Compliance With Laws.** Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder and Buyer's use or sale of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use or otherwise, that violates any Law.

6.2. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement, is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

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ARTICLE 7 - TERMINATION

7.1. **Seller's Right to Terminate.** Seller may terminate any and all Agreements between Buyer and Seller upon written notice to Buyer: (a) if Buyer fails to pay any amount when due under this Agreement ("Payment Failure") and such failure continues for 14 days after Buyer's receipt of written notice of nonpayment; (b) if within any 12 month period, two or more Payment Failures occur; (c) if Buyer breaches any provision of this Agreement or any Individual Transaction (other than a Payment Failure), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Buyer within 14 days after Buyer's receipt of written notice of such breach; or (d) if Buyer (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.2. **Effect of Termination.** The termination of this Agreement will not affect any rights or obligations of the Parties that come into effect upon or after expiration or termination of this Agreement. Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any Orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit upon termination of this Agreement, Seller may require, in its sole and absolute discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified check basis.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

8.1. **Buyer's Representations and Warranties.** Buyer represents and warrants to Seller that:

- a. in the case of a business entity, that such business entity duly organized, validly existing, and in good standing in the jurisdiction of its incorporation/organization/formation;
- b. it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required;
- c. it has the full right, power and authority to enter into this Agreement and to perform its obligations under this Agreement;
- d. the execution of this Agreement or placement of any Order by its Representative has been duly authorized by all necessary corporate action of the Party;
- e. this Agreement will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms; and
- f. it is not insolvent and is paying all of its debts as they become due.

8.2. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer that:

- a. it is a corporation duly organized, validly existing and in good standing in the State of Michigan;
- b. it has the full right, corporate power and authority to enter into this Agreement and to perform its obligations under this Agreement; and

c. this Agreement will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

ARTICLE 9 - PRODUCT WARRANTIES

9.1. **Limited Warranty.** Seller expressly warrants that: (a) at the time of delivery, the Goods will substantially and materially conform to Seller's product specifications and grades (provided, however, that Seller shall not be liable for normal manufacturing defects or customary variances from specifications), (b) to the extent the Goods are the type covered by the U.S. Food, Drug & Cosmetic Act, as amended ("FDCA"), at the time of delivery, the Goods will not be adulterated or misbranded within the meaning of FDCA, or any other food or drug laws under which the adulteration and misbranding provisions are substantially the same as those found in the FDCA; and (c) to the extent the Goods are the type covered by the FDCA, at the time of delivery the Goods will not be or contain any article that may not be introduced into interstate commerce under the FDCA.

Notwithstanding anything in the foregoing to the contrary, if the Buyer provides the packaging materials for the Goods to be used by the Seller, then the Buyer must provide sufficient materials to produce 110% of the quantity of any Goods ordered. Buyer must replenish the packaging materials upon making subsequent orders of Goods such that the amount of packaging materials exceeds the amount of Goods to be produced by 10%. Buyer acknowledges that any delay in providing packaging materials will result in a delay to Goods production, for which Seller will not be liable. Any unused packaging materials will be returned to Buyer at Buyer's sole expense. The parties agree and acknowledge that the application of labels to Goods may vary in application quality and location. Buyer acknowledges that slight label tilting and height variances are acceptable and will not be redone, refunded, or credited. Buyer agrees to accept label application as-is. With respect to packaging provided by Buyer, the Buyer represents and warrants to Seller that: (a) all labels on packaging materials will comply with applicable laws and regulations, (b) Buyer is the exclusive owner of, or has the enforceable license to use in the manner contemplated by this Agreement, all elements included within such packaging materials, (c) Seller's use of the packaging materials in the manner contemplated by this Agreement will not violate any applicable laws, regulations, copyright, trademark, or other intellectual property rights of Buyer or any third party, and (d) all such packaging materials will be of new material, good quality and workmanship, free from defects, will be free from liens and encumbrances, and will not cause or contain any substance that causes the Goods to (i) be adulterated or misbranded within the meaning of the FDCA, or any other food or drug laws under which adulteration or misbranding provisions are substantially the same as those found in the FDCA, or (ii) be or contain an article that may not be introduced into interstate commerce under the FDCA.

EXCEPT FOR THE FOREGOING LIMITED WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH HEREIN.

9.2. **Warranty Limitations.** The warranties under Section 9.1 do not apply where the Goods have: (a) been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller; or (b) been altered by Persons other than Seller or its authorized Representative.

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9.3. Buyer's Exclusive Remedy for Defective Goods. Notwithstanding any other provision of this Agreement (except for Section 9.4), this Section 9.3 contains Buyer's exclusive remedy for Defective Goods. Buyer's remedy under this Section 3 is conditioned upon Buyer's compliance with its obligations under Section 9.3a and Section 9.3b, below. During the Warranty Period, with respect to any allegedly Defective Goods:

a. Buyer shall notify Seller, in writing, of any alleged claim or defect within seven days from the date Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim or defect;

b. Buyer shall ship, at its expense and risk of loss, such allegedly Defective Goods to Seller's facility located at Pigeon, Michigan for inspection and testing by Seller;

c. If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such Goods are Defective and any such defect has not been caused or contributed to by any of the factors described under Section 9.2, Seller shall in its sole discretion, and at its expense (subject to Section 9.3b and Section 9.3d), (i) replace such Defective Goods, or (ii) credit or refund the Price of such Defective Goods less any applicable discounts, rebates or credits;

d. If Seller exercises its option to replace, Seller shall, after receiving Buyer's shipment of such Defective Goods, ship to Buyer, at Seller's expense, the replaced Goods to the delivery destination.

Buyer has no right to replacement, credit, or refund any Goods except as set forth in this Section 9.3 (or if otherwise applicable, Section 3.5). In no event shall Buyer reconstruct, repair, alter, or replace any Goods, in whole or in part, either itself or by or through any third party.

THIS SECTION 9.3 SETS FORTH THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 9.1.

9.4. Withdrawal of Goods. If Seller determines that any Goods sold to Buyer may be Defective, at Seller's request, Buyer shall withdraw all similar Goods from sale and, at Seller's option, either return such Goods to Seller (pursuant to the terms of Section 9.3.b) or destroy the Goods and provide Seller with written certification of such destruction. Notwithstanding the limitations of Section 9.3, if Buyer returns all withdrawn Goods or destroys all withdrawn Goods and provides Seller with written certification of such destruction within 14 days following Seller's withdrawal request, in either case consistent with Seller's instructions, Seller shall (a) replace all such returned Goods or (b) replace such destroyed Goods, in either case pursuant to the terms of Section 9.3.b. Buyer's remedy hereunder is not available if any such defect has been caused or contributed to by any of the factors described under Section 9.2. **THIS SECTION 9.4 SETS FORTH BUYER'S SOLE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY GOODS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 9.4.**

ARTICLE 10 - INDEMNIFICATION; LIABILITY LIMITS

10.1. Indemnification. Subject to the terms and conditions of this Agreement, Buyer shall indemnify, defend and hold harmless Seller and its members, officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party (collectively, "Losses"), arising from or relating to: (i) Buyer's handling, storage, marketing, or distribution of the Goods; (ii) the use of the Goods by Buyer or its employees, agents, contractors, successors, assigns, or customers, including without

limitation, as an ingredient or component of any other item or otherwise, in their respective manufacturing, production, labeling, marketing or distribution processes and the subsequent marketing and/or sale of products which used or contained the Goods into the retail or wholesale marketing or distribution channels; (iii) any negligent or more culpable act or omission of Buyer or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; (iv) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent acts or omissions of Buyer or its personnel; (v) any packaging, formulas, or labeling supplied by or obtained at the direction of Buyer, including without limitation, any nutrition facts labeling; (vi) any allegation that the Goods or the use thereof by Buyer or its employees, agents, contractors, successors, assigns, or customers infringes any intellectual property right of a third party; or (vii) any failure of Buyer to comply with any applicable laws. Notwithstanding the foregoing, Buyer is not obligated to indemnify or defend Indemnified Party against any claim (direct or indirect) to the extent such claim or corresponding Losses arise out of or result from Indemnified Party's or its personnel's: (x) gross negligence or more culpable act or omission (including recklessness or willful misconduct); (y) bad faith failure to materially comply with any of its material obligations set forth in this Agreement; or (z) Seller's breach of its limited warranties in these Terms regarding compliance with Pure Food Laws.

10.2. Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO ANY INDIVIDUAL TRANSACTION, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD UNDER THIS AGREEMENT AS ALLOCATED TO SUCH INDIVIDUAL TRANSACTION. THE LIABILITY LIMITATION SET FORTH IN THIS SECTION SHALL NOT APPLY TO LIABILITY RESULTING FROM SELLER'S FRAUD OR WILLFUL MISCONDUCT.

ARTICLE 11 - MISCELLANEOUS

11.1. Further Assurances. Upon Seller's reasonable request, Buyer shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

11.2. Entire Agreement. This Agreement, including all related exhibits, schedules, attachments and appendices, together with the Basic Order Terms, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

11.3. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the other Party at its address set forth on the Order, sales confirmation, or scale ticket, as applicable. Notice may also be given by facsimile or email (with confirmation of transmission).

11.4. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement

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or invalidate or render unenforceable such term or provision in any other jurisdiction.

11.5. **Amendment and Modification.** No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized Representative of each Party.

11.6. **Waiver.** No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Agreement: (a) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Agreement; or (b) any act, omission, or course of dealing between the Parties.

11.7. **Assignment.** Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void.

11.8. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

11.9. **Choice of Law.** This Agreement, including all Individual Transaction documents and exhibits, schedules, attachments and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the Laws of the State of Michigan, United States of America, without regard to its conflict of laws provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

11.10. **Arbitration.** EXCEPT AS OTHERWISE SET FORTH HEREIN, THIS AGREEMENT WILL BE SUBJECT TO THE TRADE RULES OF THE NATIONAL GRAIN AND FEED ASSOCIATION ("NGFA"). ALL CONTRACTS INVOLVING BEANS WILL BE SUBJECT TO THE NATIONAL PULSE TRADE RULES OF THE UNITED STATES DRY BEAN COUNCIL, EXCEPT THAT NGFA ARBITRATION SHALL APPLY. THE PARTIES AGREE THAT THE SOLE REMEDY FOR RESOLUTION OF ANY AND ALL DISAGREEMENTS OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT WILL BE THROUGH ARBITRATION PROCEEDINGS BEFORE THE NGFA PURSUANT TO THE NGFA ARBITRATION RULES. THE DECISION AND AWARD OF ANY ARBITRATION SHALL BE FINAL AND BINDING ON ALL PARTIES. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED AND ENFORCED IN ANY COURT OF COMPETENT JURISDICTION.

11.11. **Waiver of Jury Trial.** Each Party acknowledges and agrees that any controversy that may arise under this Agreement, including any Individual Transaction Documents or exhibits, schedules, attachments and appendices attached to this Agreement, is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement, including any Individual Transaction documents, exhibits, schedules, attachments or appendices attached to this Agreement, or the transactions contemplated hereby.

11.12. **Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the Seller's reasonable control, including, without limitation: (a) acts

of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) Law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any Governmental Authority; (g) national or regional emergency; (h) strikes, labor stoppages, or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "Force Majeure Event"). In addition, if due to a Force Majeure Event or any other cause, Seller is unable to supply sufficient Goods to meet all demands from customers and internal uses, Seller shall have the right to allocate supply among its customers and internal uses in any manner which Seller, in its sole discretion, may determine.

11.13. **Relationship of Parties.** Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties. Buyer is an independent contractor pursuant to this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

ARTICLE 12 - DEFINITIONS

Capitalized terms have the meanings set forth or referred to in this Article XII.

12.1. **"Action"** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or otherwise, whether at law, in equity or otherwise.

12.2. **"Affiliate"** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

12.3. **"Basic Order Terms"** means, collectively, any one or more of the following terms specified by Buyer in an Order pursuant to Section 2.1: (a) a list of the Goods to be purchased, including quality, size and other specifications; (b) the quantity of each of the Goods ordered; (c) the requested delivery date; (d) the unit Price for each of the Goods to be purchased; (e) the billing address; and (f) the delivery location. For the avoidance of doubt, the term "Basic Order Terms" does not include any general terms or conditions of any Order.

12.4. **"Claim"** means any Action brought against a Person entitled to indemnification under Article X.

12.5. **"Control"** (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

12.6. **"Defective"** means not conforming to the warranties in Section 9.1.

12.7. **"Defective Goods"** means goods shipped by Seller to Buyer pursuant to this Agreement that are Defective.

12.8. **"Excess Goods"** means any goods received by Buyer from Seller pursuant to an Order that materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Order. Where the

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context requires, Excess Goods are deemed to be Goods for purposes of this Agreement.

12.9. “**Governmental Authority**” means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, or tribunal of competent jurisdiction.

12.10. “**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

12.11. “**Individual Transaction**” means any Order that has been accepted by Seller pursuant to Section 3.2.

12.12. “**Law**” means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order, or other requirement or rule of law of any Governmental Authority.

12.13. “**Nonconforming Goods**” means any goods received by Buyer from Seller pursuant to an Order that: (i) do not significantly conform to the specifications listed in the applicable Order; or (ii) materially exceed the quantity of Goods ordered by Buyer pursuant to this Agreement or any Order. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

12.14. “**Person**” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority, or any other entity.

12.15. “**Personnel**” means agents, employees, or subcontractors engaged or appointed by Seller or Buyer.

12.16. “**Representatives**” means a Party’s Affiliates, employees, officers, directors, partners, shareholders, agents, attorneys, third-party advisors, successors, and permitted assigns.

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