



Tops Markets, Inc., P.O. Box 1027, Buffalo, New York 14240-1027 (716) 635-5000

TOPS MARKETS, LLC

GENERAL TERMS AND CONDITIONS OF PURCHASE

The terms and conditions set forth below (the “General Terms”) will govern the relationship between Tops Markets, LLC and/or its operating companies, divisions or affiliates (each as appropriate, “Buyer”), and the vendor identified on the face of this purchase order or any vendor linked with (or a party to) an electronic data interchange (“EDI”) transmission with Buyer (such vendor, “Seller”). If there is a conflict between the General Terms and the terms and conditions of any other form of either Buyer or Seller, the General Terms shall govern. For purposes of the General Terms, an “Order” shall mean any purchase order, any formal request to purchase goods and/or services issued by Buyer to Seller in the ordinary course between the parties pursuant to an established course of performance (whether such formal request is electronic, written or verbal), and/or EDI transmission issued by Buyer requesting products and/or services from Seller. The General Terms shall be incorporated by reference into and form a part of each Order.

- 1. Order Acceptance.** Seller’s complete or partial shipment or provision of the goods and/or services described in an Order or Seller’s acknowledgment of the Order (electronic, written or verbal) shall constitute acceptance of the Order and shall be considered a binding contract pursuant to the General Terms. Buyer does not and will not agree to any terms and conditions stated by Seller that conflict with or are in addition to those contained in these General Terms and the Order. The General Terms and the Order constitute the final, complete and exclusive statement of the agreement between Seller and Buyer concerning the Order.
- 2. Delivery.** Time of delivery is of the essence for each Order. Buyer reserves the right to refuse any goods and/or services and to cancel all or any part of an Order if Seller fails to deliver all or any part of the goods and/or services in accordance with the terms of that Order. Delivery is not complete until all goods and/or services have been received and accepted by Buyer. Acceptance of any part of an Order shall not bind Buyer to accept future shipments, nor deprive Buyer of the right to return goods and/or services already accepted. Seller shall be responsible for payment of any segregation, detention or related charges that result from Seller’s failure to tender the freight as specified in the Order.
- 3. Prices.** Prices and specifications for the goods and/or services shall be as specified in the Order. Seller must itemize all applicable sales and/or use taxes separately on the invoice for the goods and/or services. Prices for goods and/or services shall be specified on this Order and shall be no less favorable than the lowest price extended by Seller to any other customer for the same or equivalent articles in equal or lower quantities, provided that such pricing shall only be adjusted downward to reflect such lower pricing.

4. **Payment.** Payment terms shall be as specified in the Order and shall be determined from *the later to occur of*: (i) Buyer's receipt and acceptance of the goods and/or services or (ii) Buyer's receipt of Seller's invoice for the goods and/or services. Buyer at its option may pay invoices in advance of inspection and acceptance without prejudice to Buyer's rights under law or under any provision in the General Terms. Buyer reserves the right to offset against Seller's invoices any amounts remaining due from Seller to Buyer or Buyer's affiliates.
5. **Shipment and Risk of Loss.** Notwithstanding any "FOB" terms stated on an Order, property, title and risk of loss and/or damage for the goods and/or services shall remain the responsibility of Seller until Seller has delivered the goods and/or services to the Buyer's delivery location, or made the goods and/or services available for pick-up at a location specified in the Order and the goods and/or services have been accepted by an authorized Buyer representative at such designated location.
6. **Quality, Warranty and Legal Compliance.**
Quality Control, Warranty, and Legal Compliance. Buyer may audit Seller's production site equipment, methods and products and/or services provided under an Order at Buyer's reasonable request. Seller agrees to provide Buyer with the results of any quality tests conducted on the goods and/or services ordered, upon Buyer's request. Seller represents and warrants to Buyer that all goods and services provided under the Order (i) are free from defects in materials or workmanship; (ii) conform strictly to any applicable specifications in the Order, (iii) satisfy Seller's brand quality standards (if the goods and/or services are branded products); (iv) are of merchantable quality and are fit, safe and sufficient for the purpose intended; (v) comply with all applicable laws and regulations; (vi) do not infringe the intellectual property rights of any third-party; and (vii) are not and will not be adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act of 1938, as amended, the Meat and Poultry Inspection Act of 1906, as amended, and any related laws or regulations pertaining to the goods and/or services. These warranties are in addition to any warranty otherwise offered by the Seller or implied by law and survive Buyer's inspection, acceptance and payment for the goods and/or services.

Product Recalls/Market Withdrawals. Seller immediately shall notify Buyer in the event that goods and/or services must be withdrawn or recalled due to food safety or quality or for any other reason. Seller shall provide Buyer with an emergency contact list with the name, title and contact information for Seller's employees responsible for handling food safety and quality issues. Buyer may initiate, if necessary, a local recall or market withdrawal when Buyer reasonably deems it necessary for safety or quality reasons, and Seller agrees, in such case, to reimburse Buyer for any expenditures reasonably made in connection with any such withdrawal from sale and/or recall of the goods and/or services from customers, including related consultation and laboratory fees.

Country of Origin Requirements. Seller shall provide Buyer with complete and accurate information concerning the country of origin for any perishable food products supplied under an Order if and as required under the Agricultural Marketing Act of 1946, as amended, and any related rules and regulations (collectively, the "CO Requirements"). Seller shall also provide country of origin information for any floral products ordered.

Importation/Exportation Documentation. Seller shall ensure that all goods and/or services shipped pursuant to an Order from a foreign country are shipped in accordance with all applicable laws and regulations of the United States and such foreign country. Seller is responsible for providing all necessary documentation for the goods and/or services to the applicable customs or other governmental departments or agencies and shall inform Buyer if Buyer needs to obtain or provide any permits, licenses or other documentation in connection with the purchasing of the goods and/or services. Seller shall indemnify Buyer for any failure on Seller's behalf to comply with this paragraph except to the extent that such noncompliance is due to Buyer's gross negligence.

7. **Inspection, Acceptance and Rejection of Goods and/or Services.** All goods and/or services shipped pursuant to an Order are subject to Buyer's inspection and acceptance on Buyer's premises within a reasonable period of time after delivery, completion of performance, and/or Buyer's normal warehousing period. Goods and/or services rejected as defective or nonconforming to an Order may, at Buyer's option, be returned to Seller at Seller's expense, including transportation and handling costs. Payment of invoice shall not constitute acceptance of goods and/or services covered by an Order and shall be without prejudice to any claims of Buyer against Seller.
8. **Confidentiality.** Seller shall not disclose any confidential information of Buyer or Buyer's affiliates (including but not limited to the existence or contents of any Order) to anyone except its employees or agents that need to know in order to satisfy Seller's obligations hereunder and under an Order. In the event that Seller is compelled to disclose any such confidential information by law or government authority or order, Seller shall promptly notify Buyer so that Buyer may seek an appropriate protective order.
9. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's members, parents, affiliates, subsidiaries, employees, officers, directors and agents (collectively, the "Buyer's Indemnitees"), from and against any and all claims, liabilities, losses, damages, fines, penalties, or expenses (including court costs and reasonable attorney's fees), sustained by Buyer or Buyer's Indemnitees, from or arising out of the Seller's and/or Seller's employees' or agents' (collectively, "Seller's Agents") negligence, wrongful acts or omissions, willful misconduct or breach of Seller's obligations, representations, or warranties hereunder or any defect or failure in the goods and/or services provided by Seller under an Order or any infringement of the patent, trademark, copyright or similar right of any third party in connection with the goods and/or services provided hereunder. If Seller and/or Seller's Agents enter Buyer's premises in the performance of Seller's obligations hereunder or under an Order, Seller will indemnify, defend and hold harmless Buyer and the Buyer's Indemnitees from and against any and all loss, cost, or damage to property and/or injury to person (including death) to the extent caused by Seller and/or Seller's Agents.
10. **Packaging/Labeling.** At its expense, Seller shall pack the goods and/or services ordered as specified in the Order. Seller shall use identification codes on all packaging of the goods and/or services from which the production date, production batch, and other relevant data can be identified, and shall maintain proper records of all goods and/or services produced and

packed. If appropriate, the product packaging for the goods and/or services must be scannable, must contain open-dated “sell by” or “use by” identifications, must comply with EAN/UPC standards regarding barcodes, and/or must contain Seller’s product look-up numbers (“PLU’s”). Packaging for goods and/or services in general shall also be of sufficient quality and durability to withstand normal wear and tear in connection with shipping and handling.

11. **Subcontracting and Assignment.** Seller may not subcontract or assign any of its duties or obligations hereunder or under any Order without the prior written consent of Buyer. Buyer may freely assign or apportion any of its rights or obligations under this Order.
12. **Waiver of Liens.** Seller waives and relinquishes all liens and claims that Seller has or later may have as a result of labor done and materials provided by Seller in performance of any Order.
13. **Insurance.** Seller must maintain and provide a current certificate of insurance evidencing that Seller has in effect the following insurance coverages from carriers that have an A.M. Best Rating of A- VII or better: (i) general liability insurance (comprehensive form) to include products/completed operations, claims resulting from acts of terrorism, contractual, personal injury and broad form vendors insurance with limits of liability of \$3,000,000 combined single limit for bodily injury (including death) and property damage, and any Seller that is a service vendor must show coverage for premises/operations, independent contractors, and broad form property damage insurance coverage; (ii) automobile liability insurance in the amount of \$3,000,000 combined single limit for bodily injury (including death) and property damage for any Seller whose vehicles enter any premises owned or utilized by Buyer; and (iii) employer’s liability insurance with a minimum amount of \$3,000,000 per occurrence and such worker’s compensation as is required by applicable law. Seller shall add “Tops Markets, LLC, and its subsidiaries and affiliates” as an additional insured on all liability policies. Seller must send its Certificate of Insurance directly to the following: Tops Markets, LLC, P.O. Box 1027, Buffalo, NY 14240-1027 Attn: Risk Management.

SELLER ACKNOWLEDGES THAT PAYMENT OF INVOICE IS CONTINGENT UPON SELLER SUPPLYING BUYER WITH EVIDENCE OF COMPLIANCE WITH THESE INSURANCE REQUIREMENTS. SELLER AGREES THAT BUYER SHALL CONTINUE TO BE ENTITLED TO ANY AND ALL DISCOUNTS AND SHALL NOT BE PENALIZED DUE TO ANY DELAY IN PAYMENT WHICH STEMS FROM SELLER’S FAILURE TO COMPLY WITH THESE INSURANCE REQUIREMENTS.

14. **Amendments, Modifications, Termination/Cancellation and Force Majeure.** These General Terms may be modified, amended or terminated by Buyer at any time. Buyer will notify Seller of any material modification to the General Terms. If Seller accepts any Order from Buyer after such change, Seller shall conclusively be deemed to have accepted such change. Buyer may revoke or cancel an Order at any time prior to Seller’s shipment of goods and/or services upon notice to Seller without incurring any penalty. If Seller becomes insolvent or bankrupt or files a petition for bankruptcy or is subject to an assignment for the

benefit of creditors, Buyer shall be entitled to cancel any unfilled part of an Order without any liability whatsoever. Either party, upon prior notice to the other party, may reasonably delay performance under an Order in the event of circumstances or events beyond its reasonable control, including without limitation, acts of God, war, riot, strike, terrorism, government action, destruction or loss of premises or markets or consumer boycott, provided performance by the delaying party is thereafter resumed as soon as possible.

15. **Miscellaneous.** The remedies herein specifically reserved shall be cumulative and in addition to any other remedies provided by law or equity. No waiver of a breach of any provision of the General Terms or an Order or failure or delay of either party to exercise any right or remedy hereunder is effective unless in writing and signed by the waiving party. Any such waiver does not constitute a waiver of any other breach, right or remedy available to such party, and does not establish a course of conduct that will operate as a waiver of such right or provision. The General Terms and the Order shall be governed by and construed in accordance with the laws of New York, without regard to its conflicts of laws provisions. If any portion of these General Terms is held invalid or unenforceable, that portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intention of the parties, and the remainder of these General Terms shall remain in full force and effect. Nothing in this Agreement shall be construed as creating a partnership or joint venture between Buyer and Seller. Seller is an independent contractor and not an employee of Buyer, and Buyer shall not be responsible for any salary, benefits or other employee-related expenses for Seller's Agents.

16. **Buyer Policies.** Vendor agrees to adhere to Buyer's policies with respect to gifts to Buyer's associates, as communicated to Vendor in writing from time to time. Vendor acknowledges that in connection with its relationship with Buyer it may become aware of material non-public information of the Buyer ("Information"). Vendor will not use Information except in connection with providing goods and/or services to Buyer, will not disclose to anyone except to persons within its organization whose positions require them to know it, and will not buy or sell Buyer's securities or recommend that others buy or sell Buyer's securities while in possession of such Information.