

## **STANDARD TERMS AND CONDITONS OF ALL PURCHASES MADE BY FRANKLIN FARMS EAST**

Franklin Farms East, Inc. and its affiliates (“Franklin”) purchase goods from you (“Seller”) subject to the following notices, terms, and conditions.

### **1. SCOPE**

The Terms and Conditions (“Terms”) contained herein shall apply to all PURCHASES made by and purchase orders accepted by Franklin Farms East and its affiliate companies. These Terms apply to all purchases made by Franklin Farms East except to the extent the Terms conflict with an existing individual customer contract where special terms and conditions (signed by Franklin Farms East) may take precedence over this document. These Terms apply in lieu of any course of dealing between the parties or usage of trade in the industry. These Terms may in some instances conflict with other terms and conditions referenced to. In such case, the Terms contained herein shall govern, and acceptance of Seller’s order is conditioned upon Seller’s acceptance of the terms and conditions herein, irrespective of whether the Seller accepts these conditions by a written acknowledgment, by implication, or acceptance and payment of products ordered hereunder. Franklin’s failure to object to provisions contained in any communication from Seller shall not be deemed a waiver of the provisions herein. Any changes in the Terms contained herein must specifically be agreed to in writing **SIGNED by an officer of Franklin Farms East** before becoming binding on either party. By agreeing to ship products to Franklin or at the direction of Franklin and/or by accepting an order for products from Franklin, Seller accepts these **STANDARD TERMS AND CONDITONS OF ALL PURCHASES MADE BY FRANKLIN FARMS EAST**.

## 2. WARRANTIES.

Seller covenants, represents, warrants and guarantees to Franklin that, as of the date of delivery to Franklin's designated delivery address, all products sold by Seller to Franklin ("products") (a) conform to their description, specifications and applicable purchase order; (b) are of good and merchantable quality, free from defect and suitable for their intended use, including but not limited to, use as, in and/or with food, food ingredients, nutritional supplements, pharmaceutical, cosmetic, animal feed and/or ethanol products and the sourcing, manufacture, production, processing, treating, testing, packaging, storage, handling, shipment, distribution, marketing, and sale of the foregoing types of products; (c) the Products and the Manufacture of the Products are and will be in compliance with all applicable country, federal, state/provincial, and local laws, rules and regulations applicable to Seller's operations and the Products, including without limitation, (i) environmental, health and safety laws, (ii) the United States Food, Drug and Cosmetic Act, as amended and the rules and regulations promulgated thereunder (collectively the "FDCA"), the Canadian Food and Drugs Act as amended and the rules and regulations promulgated thereunder (collectively the "CFDA"), the Canadian Consumer Packaging and Labeling Act as amended and the rules and regulations promulgated thereunder (collectively the "CCPLA") and/or any other applicable and similar country, federal, state/provincial, or local laws, rules or regulations (the FDCA, CFDA, CCPLA and other similar laws, rules and regulations collectively referred to as the "Food Laws"), (iii) California Proposition 65 (California Safe Drinking Water and Toxic Enforcement Act) and the Products sold to Franklin do not contain any chemicals subject to Proposition 65 or the quantity of chemicals presents "no significant risk" or "no observable effect" as used in the California Health and Safety Code (this applies to both direct additives as well as those used in processing aids in the Products, and (iv) all other country, federal, state/provincial, and local laws, rules and regulations applicable to Seller's operations, the Products and the manufacture of the Product; (d) not be adulterated, mislabeled, mispackaged, or misbranded within the meaning of the Food Laws and/or California Proposition 65; (e) not be articles that may not be introduced into interstate or interprovincial commerce under the provisions of

the Food Laws; and (f) all information made available by Seller to Franklin, whether made available prior to, on or after the date hereof, related to the exportation or importation of Products (by Seller or Franklin), including without limitation any certificate of origin, is true, accurate, and correct in all respects and may be relied upon by Franklin.

### **3. WARRANTIES FOR PACKAGING MATERIALS.**

With respect to Products sold to Franklin that are packaging materials, Seller further covenants, represents, warrants, and guarantees that: (a) such packaging materials Products as of the date of delivery are not unsafe for use with Franklin's products, are approved for use with food, food ingredients, nutritional supplements, pharmaceutical, cosmetic, animal feed and/or ethanol products and do not impart harmful substances when used with Franklin's products; (b) heavy metals, defined as silver, arsenic, barium, selenium, lead, mercury, cadmium and hexavalent chromium, but excluding glass, are not introduced into packages, packaging components, adhesives, labels, inks, dyes and stabilizers, and with respect to lead, mercury, cadmium and hexavalent chromium, the incidental level of these four metals is less than 100 parts per million; and (c) for glass packaging materials, heavy metals defined as silver, arsenic, lead, mercury, cadmium and hexavalent chromium are not introduced into Franklin packages, packaging components, adhesives, labels, inks, dyes and stabilizers, and with respect to lead, mercury, cadmium and hexavalent chromium, the incidental level of these four metals is less than 100 parts per million.

### **4. INDEMNIFICATION .**

Seller agrees to indemnify and hold harmless Franklin, its subsidiaries, affiliates, and divisions and their respective directors, officers, employees, agents and independent contractors from all actions, suits, claims, demands, **product recall(s) (without regard to fault)**, proceedings and inquiries and any judgments, settlements, damages, losses, debts, liabilities, penalties, fines, costs and expenses , including reasonable attorneys' fees incurred by the Indemnitees,

arising out of Seller's breach of any covenant, representation, warranty, or guarantee and/or any fraudulent, intentionally misleading, negligent, or unlawful acts or omissions, or willful misconduct committed or omitted by Seller, its affiliates, and/or the directors, officers, employees, agents, consultants, and independent contractors of Seller or its affiliates.

## **5. INSURANCE**

Seller shall procure and maintain at its own expense, insurance of at least the following kinds and limits with insurance carriers with an A.M. Best rating of "A-, VII" or better: (a) Comprehensive General Liability including premises and operations liability and contractual liability with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) Comprehensive Automobile Liability, including coverage for all owned, non-owned and hired vehicles with bodily injury limits of no less than \$1,000,000 per person, \$1,000,000 per accident and property damage limits of no less than \$1,000,000 per accident; (c) Errors and Omissions coverage, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (d) Product Recall AND Product Liability Insurance with a limit of not less than \$1,000,000 per occurrence; (e) Umbrella Liability coverage with a limit of not less than \$5,000,000 per occurrence and in the aggregate. Seller shall provide Franklin with certificates issued by its insurance carriers evidencing the foregoing insurance coverage and limits. The insurance certificates required by Sections (a)- (e) above must name Franklin as additional insureds. The insurance must be primary coverage without right of contribution from any other insurance applicable to Franklin or any of its affiliates. Insurance maintained by Franklin and its affiliates is for the exclusive benefit of Franklin and its affiliates and will not inure to the benefit of Seller. Seller shall provide Franklin thirty (30) days advance written notice prior to the cancellation, expiration or non-renewal of any of the required insurance coverage or prior to any material change in coverage that is adverse to the interests of the additional insureds. All of the amounts stated in this Section are in U.S. Dollars.

## **6. SEVERABILITY & .GOVERNING LAW/VENUE.**

If any portion of this Agreement is ruled invalid for any reason, such ruling shall not affect the other portions of this Agreement, and all remaining terms and conditions of this Agreement shall remain in full force and effect. Seller agrees that this Agreement and its interpretation will be governed by the laws of the United States of America and to the extent applicable the laws of the Commonwealth of Pennsylvania without regard to the Conflict of law principles thereof. Any litigation or other legal proceeding of any kind based upon or in any way related to this Agreement, its subject matter or the rights and obligations of the parties to this Agreement shall be brought exclusively in the state or federal courts located Easton, Pennsylvania.

## **7. EFFECTIVE DATE**

Seller agrees that this Agreement shall become effective the date on which Seller first ships Product to Franklin .

## **8. WAIVER**

Failure by Franklin to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## **9. CONTINUING AGREEMENT/REVOICATION.**

These **STANDARD TERMS AND CONDITONS OF ALL PURCHASES MADE BY FRANKLIN FARMS EAST** revoke any and all prior agreements of the Parties and shall remain in full force and effect Until revoked by the mutual agreement of the Parties , otherwise, shall be in full force and effect, and shall be binding upon Seller with respect to each and every Product that Seller delivers or has delivered to Franklin. Changes may not be made to this Agreement unless all parties mutually agree to such changes in a writing, signed by the parties President or Vice President. Notwithstanding anything contained herein to the contrary, Seller may revoke this Agreement for all future deliveries upon providing Franklin 180

days' prior written notice of such revocation. Seller must send any notice of revocation to Franklin via overnight delivery service. The revocation shall not be retroactive to any sales or deliveries made prior, but only binding for any sales or purchases made after the expiration of the 180 days.

#### **10. PATENTS, COPYRIGHTS, TRADEMARKS, AND TRADE SECRETS**

Seller warrants that the sale, use or incorporation into manufactured products of all goods furnished hereunder which are not of Franklin design, composition or manufacture shall be free and clear of infringement of any valid patent, copyright, trademark or trade secret. Seller shall indemnify and hold Franklin harmless from any and all liability and/or loss of any kind (and the cost and expenses, including without limitation attorney's fees) arising out of any claim, suit or action alleging or arising out of any such infringement, which claim, suit or action Seller agrees to compromise or defend.