

ProFood International, Inc. – Terms and Conditions

1. PRODUCT. The Buyer hereby purchases the Product from ProFood International, Inc. (“Seller”), as referenced on the purchase order attached hereto (“Purchase Order”), on the terms and conditions set forth herein (“Terms and Conditions”).
2. AGREEMENT. These Terms and Conditions, and the Purchase Order, shall constitute the entire final complete and exclusive understanding of the agreement of the parties (“Agreement”) as they become effective upon Buyer’s receipt and acceptance of the Product referenced in the Purchase Order. The Product shall be deemed accepted if not refused or returned by Buyer within seven (7) days of Buyer’s receipt. Buyer shall conduct any required inspection at its expense and shall return any nonconforming goods to Seller with said seven-day period at Buyer’s expense and risk. If the Product is to be delivered in installments, Seller may elect to treat each such installment as a separate contract without limitation to Seller’s rights hereunder.
3. TERMS OF PAYMENT. Payment of the Purchase Price is due and payable in immediately available funds as set forth on the invoice. Any amounts unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of 18% per annum or the maximum allowable interest rate under applicable law. Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorney’s fees. All payments to Seller hereunder shall be without deduction or setoff.
4. WARRANTIES. SELLER MAKES NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE OR OTHERWISE, ON THE PRODUCT, OR ANY PORTION OR INGREDIENT THEREOF. WITHOUT LIMITING THE FOREGOING, SELLER IS A DISTRIBUTOR/RESELLER AND UNDERTAKES NO INVESTIGATION REGARDING THE QUALITY OR FITNESS OF THE PRODUCT OR ANY PORTION OR INGREDIENT THEREOF RECEIVED FROM ITS THIRD-PARTY SUPPLIERS AND MAKES NO WARRANTY OR GUARANTEE RELATED TO QUALITY OR FITNESS OF THE PRODUCT OR ANY PORTION OR INGREDIENT SO SUPPLIED TO SELLER.
5. TITLE; RISK OF LOSS. Title to the Product passes from Seller to Buyer on payment in full of the Purchase Price. Risk of loss passes from Seller to Buyer on shipment from Seller’s facility. Regardless of the manner of shipment, loss or damage that occurs during shipping is Buyer’s responsibility.
6. ASSIGNMENT. Buyer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Seller.
7. SHIPPING CHARGES; TAXES. Separate charges for shipping and handling will be shown on the invoice. Buyer shall be responsible for and shall pay to Seller, or if requested by Seller, directly to the taxing authority, all applicable taxes, fees, levies, imports, duties, withholdings or other charges (including any interest and penalties thereon), if any imposed by any taxing authority by reason of the sale and delivery of the Product. At Seller’s option, prices may be adjusted to reflect any increase in the costs to Seller resulting from state, federal or local legislation.
8. TERMINATION. Seller may terminate this Agreement upon written notice to Buyer if (a) Buyer is unwilling or unable to accept delivery of the Product on the delivery date and (b) the parties are unable to agree on another delivery date.
9. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD-PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, OR AS A RESULT OF, THE SALE, PERFORMANCE, NON-PERFORMANCE, DELIVERY, OR NON-DELIVERY OF
10. THE PRODUCT OR ANY PORTION OR INGREDIENT THEREOF OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT THE SELLER’S WRITTEN CONSENT (EXCEPT DIRECT DAMAGES AS PROVIDED HEREIN), AND BUYER INDEMNIFIES AND HOLDS SELLER HARMLESS FROM ANY AND ALL SUCH CLAIMS BY BUYER OR OTHERS. BUYER’S EXCLUSIVE REMEDY, AND SELLER’S ENTIRE LIABILITY FOR ANY CLAIM MADE BY BUYER OR OTHERS AGAINST SELLER IS LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE PURCHASE PRICE FOR THE PORTION OF THE PRODUCT WHICH CAUSED DAMAGES.
11. DELIVERY DATES; FORCE MAJEURE. All delivery dates are approximate and Seller shall not be responsible for damage of any kind resulting from any delay. Seller shall not be liable for any default or delay if caused, directly or indirectly, by the elements, accidents, any governmental action, prohibition or regulation, shortage or inability to obtain or non-arrival or defect of any labor, material, ingredient or product used in the Product, failure of any party or third-party to perform, or from any other cause whatever beyond Seller’s control (each, a “Force Majeure Condition”). If a Force Majeure Condition interferes with Seller’s delivery of the Product which would cause the cost of the Product to exceed the Purchase Price, Seller shall be under no obligation to deliver the Product unless Buyer agrees to pay such additional costs.
12. MISCELLANEOUS. (a) *Enforcement*. Buyer shall be responsible and liable for all costs incurred by Seller in enforcing its rights and Buyer’s obligations under this Agreement, including reasonable attorney’s fees. (b) *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, legal representatives and permitted assigns. (c) *Governing Law*. This Agreement shall be governed by and construed under the laws of Illinois, without regard to conflicts of laws rules. Any cause of action that may arise in any way under or due to this Agreement shall be brought and have venue exclusively in the County of Cook, Illinois, and the parties waive any right to a jury trial. (d) *Notices*. All notices required to be given shall be in writing and delivered to the address set forth on the Purchase Order by hand or by certified first class mail, postage prepaid, return receipt requested, and shall be deemed given upon the date hand delivered or three days after mailing. (e) *Severability*. The invalidity or unenforceability of any provision of this Agreement shall not affect any other provision which shall remain in full force and effect. If any provision of this Agreement is for any reason held to be invalid or unenforceable, it shall be construed valid and enforceable by limiting it as to time, subject or scope as required under applicable law. (f) *No Waiver*. All rights and remedies of Seller shall be deemed cumulative and not exclusive, and the exercise of any such remedy shall not be deemed a waiver of any other right or remedy. No term or condition of this Agreement shall be deemed waived by Seller, nor shall there be any estoppel against Seller, except by written consent of the Seller. (g) *Limitations*. Any suit or other action based on breach of this Agreement or any other claim arising from the Product (other than an action by Seller for amounts due Seller) must be commenced within one year from the date of tender for delivery by Seller. (h) *Acceptance*. This Agreement shall not be effective against Seller unless accepted in writing by Seller.