

## GENERAL TERMS AND CONDITIONS OF SALE

### PHILADELPHIA MACARONI COMPANY (Designated Herein as "PMC" or "Seller")

1. **ENTIRE AGREEMENT** (This "Agreement"). These General Terms and Conditions of Sale ("Terms and Conditions") shall apply to all orders, contracts and agreements ("Orders") for the purchase and sale of goods and services produced and/or delivered by Seller, whether written or oral, notwithstanding any differing or additional provisions contained in any purchase order or other document or communication issued or promulgated by any Buyer, which are hereby rejected. Seller's acceptance of any Order is expressly conditioned upon Buyer's agreement to Seller's Terms and Conditions as contained herein or in any PMC catalogue, website or other document, and Seller expressly rejects any pre-printed or other standard terms and conditions contained in any website, purchase order or other document issued or promulgated by any Buyer. Any Sales Acknowledgement issued by Seller shall not constitute acceptance of any Buyer's terms and conditions, nor shall any delivery of good by Seller constitute such acceptance. Buyer's receipt of delivery or acceptance of goods and services delivered by Seller shall constitute acceptance of these Terms and Conditions. Any performance or delivery by Seller shall be deemed for the accommodation of the Buyer pending receipt of written acceptance of these Terms and Conditions. Seller's Terms and Conditions shall supersede any prior written or oral agreements or understandings and shall not be modified or supplemented by any prior course of dealing, course of performance or usage of trade, and shall constitute the entire agreement of the parties, which may not be amended or modified except in a writing executed by both parties. The terms "Seller" or "PMC" shall include any affiliated company.
2. **DELIVERY & PRICING.** Except as otherwise agreed in writing by Seller, all goods are delivered Ex Works (Incoterms EXW) at any of Seller's plants or facilities, and all risk, title and right of possession to such goods shall pass upon such delivery. Buyer grants to Seller a purchase money security interest in such goods until full payment is received and Seller may recover and take possession of the goods without time limit or legal process. All prices are stated in US Dollars excluding any taxes, duties, license fees, transportation/forwarding/freight charges, or the costs of any special testing, marking and documentation. Buyer shall pay promptly any tax or other government charge imposed upon the production, sales, use or shipment of the goods that Seller is required to pay or collect from Buyer, unless Buyer furnishes a satisfactory and appropriate certificate of exemption from such tax or other charge. Absent specific agreement, Seller may select the carrier for the goods, and any goods held or stored for Buyer shall be at the risk and expense of Buyer. Where quantity discounts were applied, if any order is reduced or canceled, prices shall be adjusted upward as applicable to the remaining quantity.
3. **PAYMENT.** Except as otherwise agreed in writing by Seller, payment terms are net thirty (30) days from the earliest of the date of invoice or date of delivery. If Buyer's credit is or becomes unacceptable to Seller, either before or after order acceptance, Seller reserves the right to require payment in advance, delivery COD, or otherwise modify credit terms as a condition of delivery, including withholding of delivery pending resolution of credit issues, without any liability to Seller. A service charge of 2% per month shall accrue on any balance not timely paid, and Buyer agrees to pay all costs of collection, including reasonable attorneys fees. Any acceptance by Seller of partial payment shall not waive Seller's right to full payment notwithstanding any legend or conflicting statement on any check, instrument or other document made or issued by Buyer.
4. **DELIVERY DATES, FORCE MAJEURE.** Unless otherwise agreed in writing by Seller, time shall not be of the essence of any order, except for payment, all delivery dates are approximate, and Seller shall not be responsible for any delay in delivery or damages whatsoever, whether general, special, direct, indirect, incidental, consequential or otherwise, and shall not be grounds for cancellation. Seller shall have no liability for delay or failure of delivery for any cause beyond its reasonable control, including, but not limited to, fires, floods, earthquakes, riots, strikes, labor shortages, power outages, material shortages, transportation delays, acts of God, legal or regulatory requirements.
5. **INSPECTION & ACCEPTANCE.** Unless Buyer notifies Seller in writing within thirty (30) days from date of delivery that any such goods do not meet Seller's Product Warranty, such goods conclusively shall be deemed accepted by Buyer. Any such notification of non-conformance shall specify the grounds for any alleged non-conformance with full supporting details, and Buyer agrees to cooperate with Seller in evaluating goods claimed to be non-conforming, including sharing of all test results. Seller will maintain records pertaining to the goods as specifically agreed in writing by Seller or as required by applicable law.
6. **PRODUCT WARRANTY.** Subject to the provisions of Paragraph 5 above, Seller warrants that goods delivered by Seller shall meet agreed written specifications, and if such goods are subject to the federal Food, Drug and Cosmetic Act, as amended, upon delivery are not adulterated or misbranded as provided therein, nor prohibited from introduction into interstate commerce. With respect to any non-conformance with the aforesaid Product Warranty, and subject to the notification, cooperation and other requirements of Paragraph 5 above, Seller agrees either to replace the non-conforming goods, or refund their net sales price, at Seller's sole option, which shall be Buyer's sole and exclusive remedy. This warranty shall not extend to any goods that have been subject to improper handling or storage, abuse or neglect. No goods shall be returned without Seller's written authorization.  
  
THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESSED OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR USE OR ANY OTHER IMPLIED WARRANTY. BUYER'S REMEDY HEREUNDER SHALL BE ITS SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF SELLER'S OBLIGATIONS, WHETHER SUCH CLAIM IS MADE IN CONTRACT OR TORT, INCLUDING ANY CLAIMS BASED ON WARRANTY, NEGLIGENCE OR STRICT LIABILITY.
7. **LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR EXPENSES ARISING FROM OR RELATED TO ITS DELIVERY OF GOODS, AND IN NO EVENT SHALL BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE NET SALES PRICE FOR ANY GOODS PROVEN TO BE NON-CONFORMING.
8. **HOLD HARMLESS.** Buyer agrees to indemnify Seller and hold Seller harmless against any and all liability, damages, loss, cost or expense that Seller may incur, including without limitation reasonable attorney's fees and other legal costs, arising from or related to any Order or delivery of goods by Seller, including any claims by third parties relating to any Order or delivery of goods by Seller, except for any loss caused by the gross negligence or willful misconduct of Seller.
9. **CONFIDENTIAL OR PROPRIETARY INFORMATION.** Except as otherwise may be provided by a separate confidentiality or non-disclosure agreement between Seller and Buyer, Buyer agrees to keep confidential and protect from disclosure to any third party all confidential information disclosed by or obtained from Seller regardless of format, to use such information solely for purposes of any order between the parties, and to return or destroy all such information upon Seller's request. To the extent that goods delivered under any order are produced in accordance with specifications, designs or other requirements of Buyer, Buyer agrees to indemnify and hold Seller harmless for any loss, cost or damages, including legal fees, which may be assessed or payable by Seller arising from or related to any infringement or misappropriation of any third party intellectual property rights.
10. **DISPUTE RESOLUTION.** Any dispute between Buyer and Seller that arises under or relates to any order or agreement for the delivery of goods by Seller to Buyer that is not resolved by good faith negotiation between the parties shall be brought in a court of applicable jurisdiction in the city of Philadelphia, Pennsylvania. The parties accept and submit to the exclusive jurisdiction and venue of the aforesaid court in personam and agree to accept service of process by US mail to its principal office address. All contract documents and delivery of goods by Seller shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to its conflicts of law provisions. Any action other than for payment of goods shall be brought within one year after any cause of action has arisen. In the event any provision of these Terms and Conditions shall be held to be invalid or unenforceable in whole or in part, the remaining provisions shall remain valid, and substitute provisions to implement the commercial intent of the parties may be implemented by the court.
11. **ASSIGNMENT.** Any order or agreement between the parties may be assigned with the written consent of the non-assigning party, which may not be unreasonably withheld.