

FIRST CHOICE INGREDIENTS, INC.
PURCHASER
TERMS AND CONDITIONS

1. **Agreement Governed by Following Terms and Conditions and No Others.** This document is an offer by First Choice Ingredients, Inc. ("FCI") to sell the products and/or services described herein and is expressly conditioned upon Customer's assent to these terms and conditions. No additional or different terms or conditions will apply to this sale or be binding upon FCI. FCI hereby objects to any terms or conditions which are in addition to or different from these terms and conditions. By accepting this offer, Customer agrees to and accepts all of the terms and conditions set forth in this Quotation/Acceptance, and Customer further agrees that any additional or different terms or conditions contained in any document sent by Customer to FCI shall be of no effect. By acceptance of any goods or services produced hereunder, Customer specifically waives any additional or different terms or conditions. If, for any reason, this offer is construed as an acceptance of any offer made by the Customer, such acceptance is hereby expressly conditioned upon Customer's assent to all of the terms and conditions of this Quotation/Acceptance including, but not limited to, this provision which hereby expressly invalidates all additional or different terms contained in the Customer's offer.

2. **Acceptance by Customer.** Acceptance hereof shall occur when Customer (i) in writing, by facsimile transmittal ("Fax"), e-mail, or otherwise orders any of the products, or authorizes FCI to perform any of the services shown on the face hereof, or (ii) receives any product or service from FCI, whichever occurs first.

3. **Shipping Terms, Risk of Loss, Delivery, Claims and Delays.** All products are sold F.O.B. FCI's plant and Customer shall bear all risk of loss or damage in transit, and shall pay all shipping and handling charges. No loss or damage shall relieve Customer of any obligation hereunder, including payment for lost or damaged goods.

FCI may deliver products in installments with each installment to be separately invoiced and paid for when due. Any delivery not in dispute shall be paid for regardless of any controversies relating to other deliveries. A dispute as to any delivery shall not relieve Customer of its obligation to accept and pay for any other delivery installment.

Any delivery or performance date for the goods and/or services specified by FCI is a desired and not a promised date. Time is not of the essence as to any agreement or contract arising from or out of this Quotation/Acceptance.

Claims for shortages or damages or other errors in delivery or from failure of products to conform to Customer's specifications must be made in writing to FCI within thirty (30) days from date of invoice. Failure to give such notice shall constitute Customer's unqualified acceptance of delivery and waiver of any such claims.

FCI shall not be responsible for, nor liable for damages resulting from its failure to deliver any goods or services hereunder if such failure is the result of any cause beyond FCI's control including, without limitation, an act of God, act of the Customer, act of Subcontractor, embargo or other government act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, inability to obtain necessary labor, materials, or manufacturing facilities.

4. Title Passage and Insurance. Except as otherwise expressly stated herein, title of and risk of loss or damage to goods shall be transferred from FCI to Customer from such time as the goods shall have effectively been delivered to common carrier at FCI's plant.

Customer shall effect insurance satisfactory to and for FCI on all goods produced to cover all sorts of risks and losses including risks and losses from claims of Customer's customers and/or other third parties and shall pay all premium for taking out the aforesaid insurance coverage and including FCI as an additional insured.

5. Cancellation of and Changes to Orders. No agreement or contract arising from or out of this Quotation/Acceptance may be canceled or altered by Customer except upon FCI's prior written consent. In the event that FCI consents to any alteration by Customer, any changes in specifications or materials which affect cost will entitle FCI to establish new prices, and if work has been started, FCI shall be properly reimbursed for work already performed regardless of whether products or services are accepted by Customer. FCI similarly reserves the right to establish new prices if changes involve an increase or decrease in the quantities due or in the time requested for performance under the contract.

FCI has the right to cancel and declare null and void any agreement or contract arising from or out of this Quotation/Acceptance without liability to the Customer other than refunding to Customer any payment for goods and/or services tendered prior to cancellation, which goods and/or services were not delivered or performed. FCI shall reasonably notify Customer of any such cancellation and the reasons therefor.

6. Quotations/Acceptances and Prices. All prices are subject to change by FCI without notice to Customer if based on increases by Third Party Subcontractors or Material Suppliers. The price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Quotations/Acceptances automatically expire thirty (30) calendar days from the date issued unless otherwise stated in the Quotation/Acceptance and are subject to change or withdrawal at any time. FCI

reserves the right to unilaterally extend such Quotation/Acceptance up to six (6) months from date of issuance. Prices shown on the published price lists and other published literature issued by FCI are not unconditional offers to sell, and are subject to change without notice. Prices to be paid by Customer shall be subject to adjustment to those in effect at time of shipment of goods or performance of services.

7. Terms of Payment. Invoices are due and payable within thirty (30) days of date of invoice ("Due Date"). Any amount not paid by Due Date shall be subject to a finance charge of one and one-half percent (1.5%) per month until paid. Customer agrees to pay all FCI's reasonable attorney fees, collection fees, and costs arising out of any breach by Customer of any agreement or contract arising from or out of this Quotation/Acceptance.

8. Taxes and other Charges. Any tax, fee, or charge of any nature whatsoever imposed by any federal, state, county or local governmental authority shall be paid by Customer in addition to the prices quoted or invoiced. All shipping and handling charges of any nature whatsoever associated with FCI's shipment of product under any agreement or contract arising from or out of this Quotation/Acceptance shall be paid by Customer in addition to the prices quoted or invoiced.

9. Disclaimer of Damages. IN NO EVENT SHALL FCI BE LIABLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONTINGENT DAMAGES, WHETHER SUCH DAMAGES ARISE OUT OF OR ARE A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE; such damages shall include but not be limited to loss of profits or revenues, cost of substitute goods, facilities down time costs, increased construction costs or claims of Customer's customers or contractors for such damages. Customer agrees that in the event of a sale, transfer or assignment of the products sold under any agreement or contract arising from or out of this Quotation/Acceptance, the Customer shall secure for FCI the protection afforded to it in this paragraph.

Except for consumption liability which is set forth below in Paragraph 10, Customer agrees that FCI's liability and Customer's remedy for damages, whether in contract, in tort, under any warranty, in negligence, or otherwise, shall not exceed the amount of the purchase price paid by Customer to FCI. The price stated for the goods and/or services is based upon and in consideration for limiting FCI's liability as set forth herein. No action arising out of the transactions under any agreement or contract arising from or out of this Quotation/Acceptance may be brought by Customer more than one (1) year after the date of shipment of the goods or performance of the services.

10. Consumption Liability; Indemnification. Consumption losses shall be losses suffered, or damages incurred or sustained by reason of any claim or proceeding to the extent arising out of or

resulting from an actual or alleged injury to a person or property, or death resulting from the possession, use or consumption by any person of any product produced under this agreement by FCI. In the event any claim or proceeding is asserted or imposed arising out of or resulting from an actual or alleged consumption loss, the parties shall mutually agree to undertake a good faith investigation of the facts and circumstances of the claim. If such investigation determines to the satisfaction of both parties that the product manufactured by FCI was defective for failure to meet the finished product specifications, including the product quality requirements set forth by the Customer, and such failure was caused solely by FCI, and furthermore was the sole cause of the alleged death and/or injury to person and/or property, FCI shall indemnify and hold the Customer harmless from and against the consumption loss. In the event the investigation determines to the satisfaction of both parties that either (i) the product manufactured by FCI met the finished product specifications, (ii) FCI's failure to meet the finished product specifications including the product quality requirements was not caused solely by FCI or (iii) failure to meet the finished product specifications including the product quality requirements was not the sole cause of the alleged death or injury to person and/or property, then Customer shall indemnify FCI from and against the consumption loss.

11. Limitation of Liability. FCI shall not be liable for any loss, claim, expense or damage caused by, contributed to by or arising out of the acts or omissions of Customer or third parties, whether negligent or otherwise.

12. Limited Warranty. FCI represents and warrants as follows: the products to be furnished by FCI under this agreement shall have been and will be produced at all times in compliance with applicable laws, rules and regulations, and shall be made available free and clear of any security interest, lien or encumbrance in favor of any third party. The products to be furnished by FCI under this agreement shall be subject to a limited warranty that the products shall comply with all the finished product specifications including the product quality requirements set forth therein including obtaining an outside laboratory Certificate of Analysis and completion of Customer's sensory testing, and shall be free of contaminants and any defects in material and workmanship. If the Product does not meet these specifications, FCI's sole liability will be to rework the product or substitute new product to meet the quality specifications. The foregoing is the exclusive remedy for Customer. FCI makes no other express warranty. FCI disclaims and Customer waives any and all implied warranties including, without limitation, implied warranties of merchantability or fitness for a particular purpose. FCI shall under no circumstances be liable directly to Customer in contract, in tort or otherwise for direct or indirect, special, punitive, incidental or consequential damages, whether or not foreseeable. No employee or representative of FCI is authorized to modify this warranty.

THE FOREGOING WARRANTY AND REMEDY ARE EXCLUSIVE AND IN LIEU OF ALL CONTRACT OR TORT LIABILITY AND ALL OTHER WARRANTIES OR RIGHTS OF REJECTION, EXPRESS OR IMPLIED BY LAW, EQUITY, CONTRACT, CUSTOM, USAGE, OR COURSE OF DEALING INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. FCI SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONTINGENT DAMAGES WHATSOEVER.

13. Indemnity. Except as set forth in Paragraph 10 above, Customer shall, at no expense to FCI indemnify, defend, and hold FCI harmless against any and all losses, damages, and expenses (including punitive damages, multiple damages, attorney fees, and other costs of defending any action) that FCI may incur as a result of any claim made against FCI by any person including, without limitation, Customer, its successors, assigns, and customers, actually or allegedly arising in any way out of any of the products or services furnished hereunder by FCI or out of any products manufactured or sold by Customer including, without limitation, any claim which in whole or in part actually or allegedly arises out of (i) FCI's negligent or other wrongful act or omissions, (ii) danger or defect in any product or service sold by FCI to Customer, or (iii) infringement by FCI of any patent, copyright, or trade secret relating to any Design Work or to any products made by FCI for Customer.

14. Technical Information. Any formulas or samples submitted by FCI to Customer shall remain the confidential property of FCI. Customer shall not use or disclose, or permit any other person to use or disclose, any formulas or samples and, in any case, shall not reveal any design or production technique revealed thereby or inferable therefrom.

15. No License. Neither this Quotation/Acceptance nor any purchase of goods or services under any agreement or contract arising from or out of this Quotation/Acceptance shall be construed to confer upon Customer or its customers any license under patents or other proprietary rights of FCI, except the right to use such goods for the purposes for which they are sold.

16. Waiver. No provision hereof and no breach of any provision hereof shall be deemed waived by any previous waiver of such provision or of any breach thereof, by any previous custom, practice, or course of dealing or by FCI's failure to object to provisions contained in any communication or order from Customer.

17. Entire Agreement. This document constitutes the entire agreement between FCI and Customer.

18. Applicable Law. This agreement shall be governed by and be construed according to its terms and the internal laws of the State of Wisconsin. Wisconsin courts shall be the only forum for any

disputes arising hereunder. FCI and Customer consent and submit to the exercise of personal jurisdiction by the courts located in Washington County, State of Wisconsin.

19. Severability. Any provision hereof prohibited or unenforceable under applicable law shall be ineffective only to such extent and without invalidating the remaining provisions of this document.