

**FIRST CHOICE INGREDIENTS, INC.****SUPPLIER  
TERMS AND CONDITIONS OF PURCHASE**

- 1. Agreement Governed by Following Terms and Conditions and No Others; Acceptance.** This document is an offer by First Choice Ingredients, Inc. ("FCI") to purchase the goods and/or services described herein and is expressly conditioned upon Seller's assent to these terms and conditions. This order becomes a contract (1) when signed acknowledgment is received by FCI or (2) when shipment according to schedule of all or any portion of the goods covered by this order is made, or (3) when FCI gives Seller written approval of the price and delivery schedule of the goods as stated by Seller if Seller's written acknowledgment of this order contains either: (a) a different price or delivery schedule or a different type of item, or (b) no price or no delivery schedule for the item or items to which FCI's approval applies. Except as provided in the preceding sentence, it is a condition of this order that any provisions printed or otherwise contained in any acknowledgment hereof, inconsistent with or in addition to the terms and conditions herein stated, and any alteration in this purchase order, shall have no force or effect, and that Seller by such acknowledgment thereby agrees that any such provisions therein or any such alterations in this order shall not constitute any part of this contract of purchase and sale.
- 2. Delivery Time of Essence.** FCI's schedules are based upon the agreement that the goods will be delivered to FCI by the dates specified on the face of the purchase order. Time is therefore of the essence and if goods are not delivered within the time specified hereon, FCI may reject such goods and cancel order. The acceptance of later or defective deliveries shall not be deemed a waiver by FCI of its right to cancel this order, or to refuse to accept further deliveries.
- 3. Quantities.** Shipments must equal exact amounts ordered unless otherwise agreed by FCI.
- 4. Packing.** If requested by FCI, each package shall be numbered and labeled with FCI's order number, stock number, contents, and weight, shall contain an itemized packing slip and shall be properly prepaid and add or collect for shipment so as to secure lowest transportation and insurance rates and to meet carrier's requirements unless otherwise specified. No charges will be allowed Seller for packing, freight, express, or cartage unless stated herein.
- 5. Inspection.** Goods delivered (whether paid for or not) are subject to inspection, testing, and approval by FCI before acceptance. Shipments received with broken seals or damaged product may be refused at FCI's discretion.
- 6. Warranty.** Seller warrants that after the date of delivery to FCI all products, materials and work will conform strictly to the applicable product specifications and descriptions given in all respects and that the goods delivered to FCI will be merchantable, fit for their intended purpose and be free from defects in material and workmanship. Such products shall be accompanied by a Certificate of Analysis and subject to additional sensory and performance testing by FCI. Pursuant to this warranty, Seller shall, at its expense, repair or replace any defective goods. Seller shall bear all transportation charges, travel expenses, or handling expenses in connection with the repair or replacement of goods under this warranty. To obtain service under this warranty, FCI will give notice to Seller within (30) days of the time that the defect becomes apparent to FCI.
- 7. Nonconforming Goods.** All goods shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for goods described, or not shipped in containers conforming to FCI's specifications (or, in the absence of such specifications, in recognized standard containers), or allegedly violating any statute, ordinance, or administrative order, rule, or regulation, or the tests set forth above, may be rejected by FCI and returned or held at Seller's expense and risk. FCI may charge to Seller all expense of inspecting unpacking, examining, repacking, storing, and reshipping any goods rejected as aforesaid. The remedies hereinabove afforded to FCI shall not be exclusive, but FCI may hold Seller liable for any and all damages arising from any breach or default hereinabove set forth.
- 8. Cancellation.** FCI reserves the right at any time and from time to time without cause, to cancel all or any part of the undelivered portion of this order by notice to Seller. In the event of such cancellation, FCI shall not be liable to Seller for loss of anticipatory profits. The provisions of this paragraph shall not limit or affect FCI's right to terminate this purchase order for default of Seller.
- 9. Price.** Prices recorded in this order are not subject to increase. No additional amounts shall be chargeable to FCI because of taxes or excises, presently or hereafter levied on Seller. If Seller's

quoted prices for the goods covered by this order are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) at time of any shipment, Seller agrees that the price to FCI for such goods will be reduced accordingly, and that FCI will be billed at such reduced prices. If price is not recorded on the face of this order, price shall be that of last previous order given by FCI to Seller, subject to the provisions of this paragraph. If price includes taxes or excises, and if such taxes or excises or any part thereof are hereafter refunded to Seller, Seller shall immediately pay FCI the amount of such refund. Seller certifies that the prices herein are not higher than prices being charged to other organizations purchasing identical goods in smaller quantities at this particular time and do not discriminate against FCI.

The price herein specified is warranted against any decline that may be made by other Sellers of goods covered by this order; if at any time during the term of this agreement, a price shall be offered by such competing Sellers which is lower than the Seller may agree to, the Seller shall notify FCI forthwith and allow FCI to buy a three months' supply of the goods elsewhere and such quantity shall be deducted from the unshipped portion due FCI under the terms of this agreement.

**10. Payment.** Terms of payment are as previously arranged, or if specified in this order, then as so specified in this order.

**11. Taxes.** Seller accepts liability for payment of all payroll and Social Security taxes and all other federal, state, or local taxes when applicable, now or hereinafter imposed by any governmental authority.

**12. Conflicting Terms.** If terms on this order do not appear on or agree with Seller's invoice as rendered, Seller agrees that FCI may change invoice to conform to this order and make payment accordingly.

**13. FCI's Property.** All material, including tools, furnished or specifically paid for by FCI shall be FCI's property, shall be subject to removal at any time without additional cost upon demand by FCI, shall be used only in filling orders from FCI, shall be kept separate from other materials or tools, and shall be clearly identified as the property of FCI. Seller assumes all liability for loss or damage, with the exception of normal wear and tear, and agrees to supply detailed statements of inventory at monthly intervals or as otherwise agreed upon.

**14. Waiver of Liens.** Seller hereby waives and relinquishes all liens and claims statutory or otherwise which Seller now has or may hereafter have as a result of labor done and materials furnished by Seller or FCI in performance of the order.

**15. Default.** Upon the happening of any one or more of the following events, FCI shall immediately have the unrestricted right to cancel and terminate the contract without cost or liability to FCI: (1) Seller's insolvency or inability to meet obligations as they become due; (2) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (3) institution of legal proceedings against Seller by creditors or stockholders; (4) appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of goods or performance after the occurrence of any of the events above enumerated shall not affect the right of FCI to cancel its additional obligations.

**16. Warranty Against Infringement.** Seller warrants that the sale and use of goods covered by this order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents, trademarks or copyrights either in the U.S.A. or foreign countries, and Seller shall defend every suit which shall be brought against FCI or any party selling or using FCI's products for any alleged infringements of any patents, trademarks, or copyrights, by reason of the sale or use of said materials either alone, or in combination with other materials and to pay all expenses and fees of counsel which shall be incurred in and about defending every such suit and all costs, damages, and profits recoverable in every such suit, provided that the foregoing shall not apply to any infringement resulting from Seller's use of a patented invention required to comply with the written instructions of FCI if such patented invention is not normally utilized by the Seller.

**17. Trademarks and Trade Name.** If goods specified within this order are peculiar to FCI's design or if the goods bear FCI's trademark or identifying mark they shall not bear trademark or other designation of the manufacturer or Seller and similar goods shall not be sold or otherwise disposed of to anyone other than FCI without the written consent of FCI. Unless authorized by FCI in writing, FCI's name, trade name, or the name or trade name of any of FCI's subsidiaries or affiliates, shall not be used in Seller's advertising.

**18. Indemnity.** Seller shall, at no expense to FCI indemnify, defend, and hold FCI harmless against any and all losses, damages, injury to person or property 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, Seller, its successors, assigns, and customers, actually or allegedly arising in any way out of any of the products or services furnished hereunder by Seller which are integrated into products manufactured or sold by FCI.

**19. Supplementary Information.** Any specifications, drawings, notes, instructions, engineering notices, or technical data referred to in this purchase order shall be deemed to be incorporated herein by reference as if fully set forth. In case of any discrepancies or questions, Seller shall refer to FCI for decision or instructions or for interpretation. Seller shall use such information and specifications only in connection with this purchase order, and shall not disclose such information and specifications to any person, firm, or corporation other than FCI's or Seller's employees, subcontractors, or government inspectors. The title to any and all drawings, notes, instructions, engineering notices, technical data, etc., used in connection with this order shall at all times vest in FCI and shall, upon completion of deliveries hereunder or upon termination of the agreement pursuant to which this order is issued, be promptly returned to FCI. Seller assumes all liability for loss thereof or for Seller's failure to return such property to FCI.

**20. 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 from Seller.

**21. Compliance with Law.** The performance of any work pursuant to this order is and shall be subject in all respects to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state, and federal governments and all subdivisions thereof which now govern or may hereafter govern the manufacture, sale, or delivery of services and goods, contemplated by this order.

**22. Delegation, Assignment.** Seller shall not delegate or assign any duties or claims under this order without FCI's prior written consent. Any such delegation or assignment attempted without FCI's previous written consent shall effect, at FCI's option, a cancellation of all of FCI's obligations hereunder. All claims for moneys due or to become due from FCI shall be subject to deduction by FCI, for any setoff or counterclaim arising out of this or any other of FCI's orders with Seller, whether such setoff or counterclaim arose before or after any such assignment by Seller.

**23. Modification.** FCI shall have the right to make, from time to time, and without notice to any sureties or assignees, changes as to packing, testing, destination, specifications, designs, and delivery schedule. Seller shall immediately notify FCI of any increases or decreases in costs caused by such changes and an equitable adjustment of prices or other terms hereof shall be agreed upon in a written amendment to this order.

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

**25. 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 Seller consent and submit to the exercise of personal jurisdiction by the courts located in Washington County, State of Wisconsin.

**26. 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.