



PURCHASE ORDER TERMS & CONDITIONS (2018)

- 1. FINAL AGREEMENT:** All Purchase Orders of the Neil Jones Food Companies, its subsidiaries and affiliates (“Buyer”) with Seller is subject to the following terms and conditions (as referenced by the General Supply Agreement) that are an integral part of the Purchase Order. (The Purchase Order and the following terms and conditions are collectively referred to as the “Order.”) This Order, including any attachments hereto, and the General Supply Agreement constitute the entire agreement of Seller and Buyer concerning the subject matter hereof and supersedes all prior or contemporaneous statements, proposals or agreements, whether oral or written, made by either party, and supersedes all prior or contemporaneous communications between the parties relating to the subject matter of this Order and all past course of dealing between the parties or usage of trade. This Order may be altered or amended only by a further written agreement signed by the party to be charged with the effect of the alteration or amendment. Brokers and sales representatives have no authority to waive, change or add to any of the terms and conditions covered by this Order. Should this Order relate to Seller’s supply of services to Buyer, whether in whole or in addition to the supply of goods, the use of the “goods” herein shall also mean and refer to services to the fullest extent.
- 2. ACCEPTANCE OF ORDER:** This Order is not valid unless it bears the signature of a duly authorized representative of Buyer OR contains the phrase “Signature on File” on electronically transmitted Purchase Orders. Shipment against the Order will constitute Seller’s acceptance of this Order, including all instructions, terms and conditions, specifications and references. No change in the Order, irrespective of the wording of Seller’s acceptance, will be held valid without Buyer’s approval and signature.
- 3. CONFLICTING TERMS:** Any sales confirmation or other document of Seller accompanying this Order or an attachment thereto, or delivered to Buyer to confirm the sale, or part of or accompanying an invoice to Buyer, is for Seller’s internal use only and its terms shall not alter or amend the terms of this Order. All proposed alterations or amendments to the terms of this Order, which may be included in a sales confirmation, or other documents provided by Seller to Buyer are objected to and rejected by Buyer unless specifically accepted in writing and expressed as a change order.
- 4. ACCEPTANCE OF GOODS:** Buyer shall be deemed to have accepted the goods, and title to the goods and risk of loss shall pass to Buyer, when the goods are inspected and accepted by Buyer at the point of delivery.
- 5. TRANSPORTATION:** Goods shipped under the Order are to be shipped and routed as instructed by Buyer. Any excessive freight charges paid by reason of failure of Seller to comply with such instructions shall be charges to and borne by Seller.
- 6. PARTIAL SHIPMENTS:** All goods ordered shall be delivered in one complete shipment, unless otherwise specified in writing by Buyer. Seller agrees to notify Buyer immediately if, for any reason, complete delivery of all goods ordered herein cannot be made in one shipment. Buyer may reject & return any partial shipment of goods, unless specifically authorized by Buyer, and assess Seller freight & handling charges incurred. Excessive freight charges as a result of partial shipments will be borne by Seller.
- 7. DELIVERY:** Delivery or shipment must be made within the time limits specified on the Order. If not, Buyer reserves the right to purchase elsewhere and charge Seller with losses incurred as a result thereof, to cancel the Order or any part thereof, and/or to exercise its other legal rights or remedies. Seller acknowledges that Buyer is purchasing the goods for resale to Buyer’s customers. If for any reason delivery cannot be made on the agreed date specified on the Order, Seller shall immediately (i) notify Buyer of the cause for the non-performance and of the anticipated extent of the delay, (ii) reimburse Buyer for any excessive freight costs incurred as a result of late shipment and (iii) may be required to reimburse Buyer for any customer charge backs and any additional labor and material costs incurred by Buyer in fulfilling its contract or commitment with its customers.
- 8. PACKING LIST AND INVOICES:** All shipments shall be invoiced and contain a packing list giving a description of material, quantity, part number, certificate of analysis (for ingredients) and purchase order number. Buyer reserves the right to charge Seller back for all expenses incurred, and/or a handling fee, as a result of improper marking, packing or routing done contrary to the Order or other instructions of Buyer.



9. EXCESS GOODS: Except for customary quantity variation recognized by trade practice, goods in excess of those specified will not be accepted. Buyer may refuse or return such goods at Seller's risk. Seller shall pay all transportation charges, both to and from the original destination, and handling costs. Buyer's count will be accepted as final and conclusive on all shipments.

10. SELLER'S WARRANTIES: Seller warrants that all goods provided pursuant to this Order shall be of the best quality, merchantable, suitable for the intended purpose, free from defects in workmanship, material or design, and shall conform either to the specification set forth in the Order or to a sample supplied to Buyer. Seller acknowledges that Buyer may use Seller's goods in the manufacture of other goods sold by Buyer ("Buyer's Products"). Buyer's Products may be required to meet certain specifications or measures of performance. Seller expressly warrants that the goods purchased by Buyer pursuant to the Order meet those specifications or measures of performance. If the goods described in this Order are subject to the Federal Food, Drug and Cosmetic Act, then Seller warrants that the goods as of date of shipment to Buyer are not adulterated or misbranded as those terms are defined in said Act, and further warrants that the goods may be introduced into interstate commerce pursuant to the provisions of said Act.

11. REJECTIONS/DEFECTIVES: Buyer reserves the right, at any time within 90 days after delivery, to reject or revoke acceptance of goods that are found to be defective in material or workmanship or which otherwise do not confirm with the requirements of the Order. Payment shall not constitute or be evidence of acceptance by Buyer or bar Buyer's right to revoke acceptance of the goods. Buyer shall have the right to require that such goods be repaired or replaced promptly with satisfactory materials and workmanship or reject and return such goods at Seller's expense including transportation charges both ways and any handling costs incurred by Buyer.

12. CLAIMS/DEFECTIVES: Notice of claims for defective or nonconforming goods shall be made promptly after the defect or nonconformity is discovered, but Buyer shall have, at minimum, at least 10 days after date of receipt of the goods to inspect the goods before being deemed to have accepted the goods. Buyer shall not be required to return defective goods prior to replacement, but Seller may, at Seller's option, have an opportunity to verify the defect, provided verification is exercised within the earlier of (i) 30 days of verbal or written notice of claim or (ii) the time period necessary to avoid a failure of performance by Buyer with its customer (as determined by Buyer). If Seller does not undertake the necessary steps to verify the defect within this time period, then Buyer's determination as to the defect shall be conclusive and binding on the Seller. Seller shall, at Buyer's option, either repair or replace defective or nonconforming goods at no cost to the Buyer, or give Buyer a full cash refund, including shipping and handling incurred by Buyer. Satisfactory and complete settlement of claims for defective or nonconforming goods must be made by Seller in accordance with the requirements of the Order within 45 days of notice of claim to Seller. If Seller fails to proceed promptly with the replacement or correction thereof, Buyer may either set-off (deduct) the claim against any amount that may become payable to Seller or charge Seller by statement. Amounts owed by Seller to Buyer as a result of unsatisfied claims or unpaid balances on Seller's account must be repaid in cash and shall, after 30 days from the date of the statement, bear interest at the rate of 1.5% per month. Buyer reserves the right to require Seller to reimburse Buyer for any (i) costs incurred by Buyer to avoid a failure of performance by Buyer with its customer or (ii) damages resulting from Buyer's inability to fulfill its contract or commitment with its customer (as determined by Buyer) in a timely manner.

13. PRICE: Buyer shall not be billed at prices higher than those stated on the Order. If prices are higher than specified herein, the difference will be set-off (deducted) against any amount that may become payable by Buyer to Seller under the Order or otherwise.

14. INVOICES AND CASH DISCOUNTS: Seller agrees to mail a separate invoice for each shipment. Cash discount periods will be calculated from the date of receipt and acceptance of the goods ordered or the receipt of a correct and proper invoice, whichever occurs later, and not from the date of the invoice. Seller's failure to promptly provide a correct invoice will require Seller to extend the cash discount period without loss of discount.

15. SET-OFFS (DEDUCTIONS): Seller agrees that Buyer shall have the right to set-off against any amounts that may become payable by Buyer or Seller under the Order or otherwise, any amounts that Seller may owe to Buyer, whether arising under the Order or otherwise.

16. INCORRECT INVOICES: Invoices received against this Order that do not correctly reflect the provisions of the Order, especially as to the prices, promotional allowances, shortages not shipped, quantities or freight charges, will be corrected by Buyer's execution of a debit memorandum detailing any overcharges, which will be set-off (deducted) from the invoice amount or any other amount owing to Seller.



17. PATENTS, TRADEMARKS AND COPYRIGHTS: Seller agrees to indemnify, defend (with legal counsel reasonably acceptable to Buyer), and hold harmless Buyer, and its officers, directors, agents, employees and shareholders, and its subsidiaries and customers, against any and all actual or threatened liability, claim, demand, action, cause of action, suit, loss, damage, injury, expense, cost, settlement, or judgment of any kind or nature, alleged or asserted against any or all of them, in any judicial or administrative proceedings, arbitration proceedings, or informal proceeding, arising out of or relating or pertaining to the actual or alleged infringement by any or all of them of any patent, trademark or copyright in connection with the purchase, use or resale of the goods specified in the Order.

18. CONFORMITY WITH APPLICABLE LAWS: Seller warrants that all of the goods sold pursuant to this Order were or will be produced in compliance with all applicable requirements. Upon Buyer's request, Seller will promptly deliver to Buyer a written certificate to the effect that such requirements have been complied with.

19. CANCELLATION: Buyer may cancel all or any part of this Order, without any liability to Seller, if Seller fails or is unable to comply with the terms and conditions of the Order, time being of the essence of the Order. Buyer also may cancel this Order without any liability to Seller before shipment by Seller. Upon such cancellation, all obligations of Buyer with respect to the portion of the Order cancelled shall cease. Seller shall be liable to Buyer for all costs, expenses and damages incurred by Buyer on account of cancellation.

20. DISPUTE RESOLUTION: All questions regarding the validity or interpretation of this document or any associated documents, and any dispute, controversy, or claim of any nature concerning, arising out of, or relating to the transaction[s] documented herein, shall be decided according to the substantive and procedural law of the State of Washington, including Washington law regarding conflict of laws and regarding arbitration. Buyer and Seller agree that all such matters shall be determined in the Superior Court of Clark County, Washington, and all parties consent to the jurisdiction of such court and agree that such court is the appropriate venue for settlement of such matters; provided, however, that apart from (1) an application for and the referral of such disputes to binding arbitration, (2) an application for and the granting of injunctive relief, and (3) confirmation and enforcement of an arbitration award, all such matters shall be settled through binding arbitration before a single arbitrator named by such court. The parties shall pay the costs and expenses of the arbitrator in equal shares; provided, however, that the prevailing party shall be entitled to recover from the other party the costs and expenses of the arbitrator paid or to be paid by the prevailing party as provided herein. In rendering an award, the arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural law of the State of Washington, including Washington law regarding conflict of laws and regarding arbitration. The arbitration proceedings shall be conducted in Vancouver, Washington. The parties shall be entitled to discovery in accordance with the Washington Civil Rules for Superior Court. The arbitrator shall give written notice to the parties stating the arbitration award and shall furnish to each of the parties a signed copy of such award.

21. LEGAL EXPENSES: Should any legal action, suit, or arbitration proceeding be instituted by either party to the transaction documented herein against the other party relating to the validity or interpretation of this document or any associated documents, or relating to any dispute, controversy, or claim of any nature concerning, arising out of, or relating to the transaction[s] documented herein, then the prevailing party in such matter shall be entitled to recover from the other party its reasonable attorney's fees and costs or expenses of litigation incurred in connection with the matter, including expert witness fees and costs, and all costs and expenses of the arbitrator incurred by the prevailing party.