

# Purchase Order Terms & Conditions

**Acceptance - Agreement.** Seller's commencement of work on the goods subject to this purchase order or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this purchase order. Any acceptance of this purchase order is limited to acceptance of the express terms contained herein. Any proposal or documents of Seller providing additional or different terms, or any attempt by Seller to vary any of these terms, is hereby objected to and rejected. Proposals or any subsequent documents shall not operate as a rejection of this purchase order unless such variances are in the description, quantity, price or delivery schedule of the goods (which shall be deemed a material alteration of this purchase order). Material alterations shall not be accepted by Seller. If this purchase order is deemed an acceptance of a prior offer by Seller, such acceptance is limited to its express terms.

**Price.** This purchase order must not be filled at a higher price than shown on the purchase order. Any change must be authorized in writing by Tyson. If no price is shown, Tyson's agent must be notified of the price and its acceptance obtained before Seller fills the purchase order. Prices are F.O.B. delivered unless otherwise specified and include all custom duties, all sales, use, excise and property taxes, shipping, packaging, boxing, crating, labeling, storage, insurance and similar charges. Title to the goods and risk of loss shall pass to Tyson upon delivery.

**Price Warranty.** Seller warrants that the prices for the articles sold to Tyson hereunder are as favorable as those currently offered to its customers for the same or similar articles in similar quantities in compliance with all pricing laws and regulations. If Seller reduces its price for such articles during the term of this purchase order, Seller agrees to reduce the price hereof correspondingly. Seller warrants that prices shown on this purchase order are complete.

**Setoff.** All claims for money due or to become due from Tyson shall be subject to deduction or setoff by Tyson by reason of any counterclaim arising out of this or any other transaction with Seller.

**Changes.** Tyson shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or the time required for performance of this purchase order, an equitable adjustment shall be made and this purchase order shall be modified in writing accordingly. Seller agrees to accept any such changes to this purchase order.

**Delivery.** Time is of the essence for this purchase order. If delivery of items or rendering of services is not completed by the time promised, Tyson reserves the right, in addition to its other rights and remedies, to terminate this purchase order without liability by notice effective when received by Seller as to items not yet shipped or services not yet rendered. Tyson may then purchase substitute items or services elsewhere and charge Seller with any loss incurred.

**Shipment.** If, in order to comply with Tyson's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this purchase order, any increased transportation costs resulting shall be paid by Seller unless the necessity for such rerouting or expedited handling has been caused by Tyson.

**Force Majeure.** Tyson may delay delivery or acceptance occasioned by causes beyond its control, such as government action or failure of the government to act where such action is required, strike or other labor dispute, fire, act of God or unusually severe weather. Seller shall hold such goods at the direction of Tyson and shall deliver them when the cause of the delay has been removed. Tyson shall be responsible for Seller's direct additional costs only if Tyson's request to hold the goods delays Seller's performance of this purchase order.

**Warranty.** Seller expressly warrants that all goods or services furnished under this purchase order shall conform in all respects to all samples, specifications and appropriate standards, will be new, and will be free from defects in materials or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers, labels or advertisements for such goods or services, and that all goods will be adequately contained, packaged, marked and labeled. Seller warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Seller

knows or has reason to know the particular purpose for which Tyson intends to use the goods or services, Seller warrants that such goods or services will be fit for such particular purpose. Inspection, test, acceptance or use of the goods or services furnished hereunder shall not affect Seller's obligation under this warranty, and all warranties shall survive inspection, test, acceptance and use. Seller's warranty shall run to Tyson, its successors, assigns, customers and users of products sold by Tyson. Seller agrees to replace or promptly correct defects of any nonconforming goods or services without expense to Tyson. If Seller fails to correct defects in or replace nonconforming goods or services promptly, Tyson, after reasonable notice to Seller, may make such corrections or replace such goods and services, and charge Seller any cost incurred.

**Compliance with Laws.** Seller expressly warrants that all goods supplied hereunder will have been produced in compliance with, and Seller agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations. Seller represents that, by acceptance of this purchase order, it is and shall continue to be in full compliance with all Executive Orders, federal laws, rules and regulations, all as from time to time amended, relating to equal employment opportunity, and that the following laws, orders and regulations are hereby incorporated by reference: Equal Opportunity Clause prescribed by E.O. 11246, as amended (41 CFR Chapter 60); Affirmative Action Clause prescribed by the Vietnam Era Veterans Readjustment Assistance Act of 1974 (41 CFR Chapter 60) (Disabled Veterans of the Vietnam Era); Minority Business Enterprises Clause requirements of E.O. 11625 (41 CFR Part 1); Affirmative Action Clause prescribed by E.O. 11758 (41 CFR Chapter 60) (Handicapped); the Union Dues Clause prescribed by E.O. 13201 (29 CFR Part 470), the Lilly Ledbetter Fair Pay Act of 2009, and the Employee Notice Clause requirements prescribed by E.O. 13496 (29 CFR Part 471, Appendix A to Subpart A).

**Supplier Code of Conduct.** Seller warrants that it has read and that it will comply with the principles, expectations and requirements stated in the Tyson Supplier Code of Conduct found at [www.tyson.com/corporate/supplier\\_code\\_of\\_conduct.pdf](http://www.tyson.com/corporate/supplier_code_of_conduct.pdf)

In addition, neither Seller nor any of its affiliates in the course of providing goods, materials or services to Tyson under this purchase order shall (i) use any funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to any political activity or to influence official action; (ii) make any direct or indirect unlawful payment to any foreign or domestic government official or employee (whether full-time or contract); (iii) make or receive any bribe, payoff, influence payment, kickback or other improper payment; or (iv) make any other similar type payments or gifts or give anything of value to any government official or employee that could be deemed a bribe or unlawful. Tyson shall have the right to request and audit all records of Seller to ensure compliance with the terms of this provision. Seller acknowledges and agrees that Tyson retains the right to decline future business opportunities or to end existing business relationships, including the transactions represented in this purchase order, if Seller does not comply with the Tyson Supplier Code of Conduct, the additional requirements of this section, or with laws applicable to Seller's business operations.

**Indemnification.** Seller shall defend, indemnify and hold harmless Tyson against all damages, claims or liabilities and expenses (including reasonable attorneys', experts' and legal fees) arising out of or resulting in any way from any defect or nonconformance in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller. Tyson may be represented by and actively participate through its own counsel at its own expense in any suit or proceeding.

**Insurance.** Seller shall maintain such public liability insurance, including product liability, contractual liability, completed operations, contractor's liability and protective liability, automotive liability insurance (including non-owned automotive liability), workers' compensation and employer's liability insurance as will adequately protect Tyson against all damages, liabilities, claims, losses and expenses. Seller agrees to submit certificates of insurance evidencing its insurance coverage when requested by Tyson. All insurance coverage provided to Tyson by Seller pursuant to these terms and conditions shall be primary insurance with respect to Seller's obligations, and shall not be or be considered to be contributing insurance with any of Tyson's policies of insurance. No recovery by Tyson under any policy of insurance procured by Seller shall limit, waive or bar any other right, remedy, claim, cause of action or recovery that Tyson may have against Seller under these terms and conditions or applicable law.

**Proprietary Information - Confidentiality - Advertising.** Seller shall consider all information furnished by Tyson to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing this purchase order unless Seller obtains written permission from Tyson to do so. This paragraph shall apply to drawings, specifications or other documents prepared by Seller for Tyson in connection with this purchase order. Seller shall not advertise or publish the fact that Tyson has contracted to purchase goods from Seller, nor shall any information relating to the purchase order be disclosed without Tyson's written permission. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Tyson shall be deemed secret or confidential, and Seller shall have no rights against Tyson with respect thereto except such rights as may exist under patent laws.

**Proprietary Rights.** Seller agrees, upon receipt of notification, to promptly assume full responsibility for defense of any suit or proceeding which may be brought against Tyson or its agents, customers or other vendors for alleged infringement or violation of any patent, trademark, trade dress, trade secret, service mark or other proprietary right of Seller, as well as for any alleged unfair competition claim relating to the goods or services furnished hereunder and arising from the acts or omissions of Seller. Seller further agrees to indemnify Tyson, its agents and customers against any and all expenses, losses, royalties, lost profits and damages, including any settlement of any such claim.

**Inspection/Testing.** Payment for the goods delivered hereunder shall not constitute acceptance thereof. Tyson shall have the right to inspect such goods and reject any or all of said goods. For goods whose defect or nonconformity is not apparent on examination, Tyson reserves the right to require replacement, as well as payment of damages. Goods supplied in excess of quantities stated in this purchase order may be returned to Seller at its expense. In addition to Tyson's other rights, Tyson may charge Seller all expenses of unpacking, examining, repacking and reshipping excess or nonconforming goods. Nothing contained in this purchase order or any confirmation in writing sent by Seller shall relieve Seller from the obligations of testing, inspection and quality control.

**Records, Inspections and Audit Right.** At all times Seller shall maintain accurate books and records containing information regarding the raw materials, production, storage, sale, shipment, pricing of and payment for the subject goods. These books and records shall be kept in accordance with all legal requirements, industry practice and generally accepted accounting principles, as applicable, and preserved for not less than three (3) years after creation. Tyson and its agents and representatives have the right, but not the obligation, to examine the books and records of Seller for the purpose of verifying Seller's compliance with its obligations under this purchase order. Any such examination shall be during business hours in Seller's principal offices, the facility where the goods were produced, or such other location or method as Tyson may reasonably request. Seller shall cooperate with Tyson's examination, which cooperation shall include making Seller's officers, employees, agents and contractors available for discussion of Seller's books, records and compliance with this purchase order. The examination shall be at Tyson's expense, unless Tyson determines that Seller has failed to perform its obligations under this purchase order or applicable laws, in which event the expense of examination plus other damages incurred by Tyson shall be paid by Seller.

Tyson also has the right, but not the obligation, to inspect any facility where the subject goods are produced or stored for the purpose of verifying compliance of such facilities with applicable law, compliance with this purchase order and compliance with Tyson's food safety, quality and other manufacturing and storage standards, practices and procedures. Seller will provide copies of such books and records as Tyson may reasonably request, provided that Tyson agrees to maintain any information contained in such books and records which is confidential and proprietary information of Seller in the same manner that Tyson maintains its own confidential and proprietary information. Tyson will not use any such confidential and proprietary information of Seller except as contemplated by these terms and conditions.

**Termination for Convenience of Tyson.** Tyson reserves the right to terminate this purchase order or any part hereof for its sole convenience. In the event of such termination, upon notification by Tyson, Seller shall immediately stop all work hereunder and shall immediately cause any of its suppliers or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the purchase order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's suppliers or subcontractors which Seller reasonably could have avoided.

**Termination for Cause.** Tyson may terminate this purchase order or any part hereof for cause in the event of any default by Seller, or if Seller fails to comply with any specific or these general terms and conditions. Late deliveries, deliveries of products which are defective or which do not conform to this purchase order and failure to provide Tyson, upon request, reasonable assurances of future performance shall all be bases for termination for cause. Tyson shall not be liable to Seller for any amount, and Seller shall be liable to Tyson for any and all damages sustained by reason of the default which gave rise to the termination.

**Limitation on Tyson's Liability - Statute of Limitations.** In no event shall Tyson be liable for anticipated profits or for incidental or consequential damages or for penalties of any description. Tyson's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this purchase order, or from the performance or breach thereof, shall in no case exceed the price allocable to the goods or services which gives rise to the claim. Any action resulting from any breach on the part of Tyson as to the goods or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

**Remedies.** Each of the rights and remedies reserved by Tyson in this purchase order shall be cumulative and additional to any other or further remedies provided by law or equity, or in this purchase order.

**Waiver.** Tyson's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege, or Tyson's waiver of any breach hereunder shall not thereafter waive any other terms, conditions or privileges, whether of the same or similar type.

**Assignments and Subcontracting.** No part of this purchase order may be assigned or subcontracted by Seller without prior written approval of Tyson.

**Choice of Law and Venue.** These terms and conditions shall be interpreted pursuant to the laws of the State of Arkansas without giving effect to its choice of law provisions. Litigation brought to contest disputes arising under this purchase order shall be brought only in the state or federal courts of the State of Arkansas.

**WAIVER OF JURY TRIAL. SELLER AND TYSON IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING BROUGHT BY THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH OR RELATED TO THIS PURCHASE ORDER OR ANY PORTION OF ANY AGREEMENT WHICH IS RELATED TO THIS PURCHASE ORDER, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY.**

**Entire Agreement.** This purchase order and any documents included by reference constitute the entire agreement between Tyson and Seller unless specifically modified by a writing signed by all parties.

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