



34352 Industrial Way
Abbotsford, BC Canada V2S 7M6
T 604 850 3505 F 604 852 1535
pacificcoastfruit.com

1. NO OTHER TERMS: ACCEPTANCE – These terms and conditions of sale ("Terms") are the only terms which govern the sale of the goods ("Product") by the seller ("Seller") and buyer ("Buyer") identified on the Contract. The accompanying Contract and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. A PURCHASE ORDER OR OTHER DOCUMENT CONTAINING TERMS AND CONDITIONS INCONSISTENT WITH OR IN ADDITION TO THOSE SET FORTH IN THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES BE BINDING UPON SELLER UNLESS SPECIFICALLY ACCEPTED BY SELLER IN A WRITTEN AMENDMENT SIGNED BY SELLER. SELLER HEREBY OBJECTS TO AND EXPRESSLY REJECTS ANY SUCH ADDITIONAL OR INCONSISTENT TERMS AND CONDITIONS. Seller's action or failure to act shall not be deemed acceptance of any additional or modified terms or condition.

2. WARRANTY – Seller warrants that it has good title to the Product. Subject to the notice requirements in Section 4 below, the following additional warranties are made by Seller, as of the date of Product shipment: (a) the Product will be in material compliance with all applicable federal laws, regulations, orders and directives issued by the Health Canada or the Canadian Food Inspection Agency (other than laws, regulations, orders and directives applicable or specific printed matter expressly required by Buyer to be placed on labelling or packaging); (b) except for specific printed matter expressly required by Buyer to be placed on labelling or packaging, the Product will not be adulterated, mislabeled or misbranded c) if the Product contains a color additive, such color additive was from a batch permitted in accordance with the *Canada Food and Drug Act*. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND; ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY. The Seller shall not be liable for any breach of the warranty set forth in this Section 2 if: (i) Buyer makes any further use of such Product after providing notice pursuant to this Section 4; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Buyer alters or processes such Products without the prior written consent of Seller.

3. NO WARRANTY – Unless conspicuously noted otherwise, THE PRODUCT HAS NOT BEEN PROCESSED TO ADEQUATELY REDUCE THE PRESENCE OF THE MICROORGANISMS OF PUBLIC HEALTH SIGNIFICANCE. The Buyer hereby covenants to Seller that either: (a) the Buyer will perform all necessary commercial processing required by applicable laws in the Buyer's jurisdiction on the Product ("Commercial Processing") and has established and is following procedures (such as sufficient heat treatment, acidification, or cooking) that significantly minimize or prevent the presence of microorganisms of public health significance; or (b) if the Buyer does not perform Commercial Processing, but the Product will receive such Commercial Processing by another entity prior to being made available to consumers, the Buyer will disclose in documents accompanying the Product that the Product is not processed to control the presence of microorganisms of public health significance and the Buyer will only sell the Product with a written agreement with the purchasing entity whereby that entity agrees to either: (i) follow procedures (identified by the entity in the written agreement) that significantly minimize or prevent the presence of microorganisms of public health significance; or (ii) obtain written assurance from the other entity that the Product will receive all necessary commercial processing required by applicable law and that there will be written disclosure accompanying the product that the product is not processed to control the presence of microorganisms of public health significance. Seller makes NO WARRANTY as to the adventitious presence of pathogenic organisms including without limitation *Listeria monocytogenes*. Buyer accepts the entire risk of presence of pathogenic organisms and agrees to indemnify, defend and hold Seller harmless for, from and against all claims arising from or relating to the presence or suspected presence of pathogenic organisms in the Product.

4. NOTICE – The Buyer must inspect the Product for nonconformity with the Product specifications set out in the Contract within seven (7) days from delivery of the Product. The Buyer will be deemed to have accepted the Product if it has not notified the Seller of any issues within seven (7) days of delivery. If within 90 days from the date of shipment by Seller of each lot of Product, Buyer notifies Seller that the Product is not as warranted in Section 2 and Seller reasonably verifies Buyer's claim that the Products are defective, Seller shall, at Seller's sole option, either adjust, remedy or replace the lot or any affected portion of the Product. Seller shall bear reasonable expense in connection with the storage and freight necessary to adjust, remedy or replace the affected portion of the Product. Buyer shall be responsible for any costs that are not expressly the responsibility of the Buyer under this Section 5, including without limitation any combination or alteration of the Product by the Buyer, packaging or labour costs incurred by the Buyer. The foregoing adjustment, remedy or replacement shall be subject to the warranties set out in Section 2 for: (i) an additional period of 30 days from adjustment,



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remedy or removal, or (ii) the remaining original warranty period on the original Product, whichever is longer. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Contract or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

5. EXCLUSIVE REMEDY: LIMITED DAMAGES – THE REMEDIES SET FORTH IN THIS AGREEMENT CONTAIN THE BUYER'S EXCLUSIVE REMEDIES AGAINST SELLER AND ITS SUPPLIERS RELATING TO THE PRODUCT, WHETHER IN CONTRACT OR IN TORT OF UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM CAUSE. Seller and its suppliers shall have no obligations as to any Product, or portion of the Product, which (i) has not been properly stored or handled, (ii) has not been stored, handled or maintained according to the instructions of the Seller or in supplier furnished manuals, or (iii) has been modified following delivery. Seller and its suppliers shall not be liable for the fault, negligence or wrongful acts of Buyer or Buyer's employees, or Buyer's other contractors or suppliers. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER. NEITHER SELLER NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

6. TERMINATION – Buyer may not cancel or terminate the Agreement, or direct suspension of delivery, unless Seller agrees in writing. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for thirty (30) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Upon termination of this Agreement for any reason, Buyer shall promptly return or destroy the Product, at Seller's sole option, at Buyer's sole expense. Termination of this Agreement under this Section 6 does not relieve Buyer of any obligation to pay for all Products under this Agreement.

7. DELAYS – If Seller suffers delay in performance due to any cause beyond its control including but not limited to act of God, war, act or failure to act, of government, act or omission of Buyer, fire, flood, strike or labor trouble, epidemic, pandemic, sabotage, or delay in obtaining from others suitable services, materials components, equipment, or transportation, the time of performance shall be extended a period of time equal to the period of the delay and its consequences.

8. STORAGE - Any portion of the Product on which the manufacture or shipment is delayed by causes within Buyer's control, or by causes which affect Buyer's ability to receive the product, may be placed in storage by Seller at Buyer's expense and risk.

9. SHIPMENT – F.O.B. Seller's factory Abbotsford, British Columbia unless other arrangements are made.

10. TITLE AND INSURANCE – Title to the Product and risk of loss or damage shall pass to Buyer at the F.O.B. point. The Product subject to this Agreement are sold subject to any statutory trusts authorized by applicable law. Seller retains a trust claim over these Products, all inventories of food or other products derived from the Product, and any receivables or proceeds from the sale of the Product until full payment is received. Buyer grants to Seller a purchase money security interest in the Product and proceeds and any replacements, regardless of the mode of attachment to realty or other property, until the full price has been paid in cash. Buyer agrees to do all acts necessary to perfect and maintain said security interest, and to protect Seller's interest by adequately insuring the Product against loss or damage from any external cause with Seller names as insured or loss payee. Buyer hereby irrevocably appoints Seller as its attorney in fact to execute any financing statements or other instruments or documents reasonably necessary or desirable to perfect and maintain said security interest in the product and proceeds.



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11. TAXES – Taxes are the responsibility of Buyer. All charges for the Product are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

12. ASSIGNMENT – Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

13. RELATIONSHIP OF PARTIES – The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14. NO THIRD-PARTY BENEFICIARIES – This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

15. SEVERABILITY – If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16. COMPLIANCE WITH LAW – Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

17. ARBITRATION – The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. If the parties are unable to resolve a dispute in good faith, then any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Vancouver, British Columbia, Canada before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

18. GENERAL – Buyer shall pay interest on all late payments at the lesser of the rate of 18% per annum or the highest rate permissible under applicable law, calculated daily and compounded annually. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof. The laws of the province of British Columbia (excluding the U.N. Convention on Contracts for the International Sale of Goods) and the laws of Canada applicable therein shall apply to and bind the parties in any and all issues arising under this Agreement. Statements about the Product may have been made to Buyer by representative of Seller. Such statements do not constitute warranties and shall not be relied on by Buyer and are not part of this agreement. The entire agreement is embodied in this writing. There are no promises, representations or warranties except as contained herein. THIS WRITING CONSTITUTES THE FINAL EXPRESSION OF THE PARTIES' AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT.