

STANDARD TERMS AND CONDITIONS OF SALE – NUTRIFY

1. **Applicability.** The terms and conditions set forth herein (the “**Terms**”), along with each confirmation of sale (“**Contract Confirmation**”) entered into by the parties (collectively, the “**Agreement**”), shall comprise the entire agreement between Nutrify, LLC (“**Seller**”) and the buyer listed on the Contract Confirmation (“**Buyer**”) for the purchase and sale of conventional and, as applicable, organic grains and feed ingredients identified in the Contract Confirmation (the “**Goods**”). No term or condition of this Agreement may be altered or superseded without written consent from Seller’s authorized representative. Seller hereby objects to the inclusion of any terms proposed by Buyer that are different from or additional to the terms of this Agreement, including but not limited to any terms or conditions contained in Buyer’s purchase order, general terms and conditions of sale, or any other document issued by Buyer in connection with Buyer’s order of Goods. Fulfillment of Buyer’s order shall not constitute acceptance of any terms proposed by Buyer.

2. **Shipping Terms.** The Goods will be delivered or made available to Buyer for pickup within a reasonable time after execution of the Contract Confirmation, subject to availability of Goods. Seller shall not be liable for any delays in transit. The Goods shall be (a) delivered to the address specified in the Contract Confirmation or (b) made available to Buyer for pickup at Seller’s location (each of (a) and (b), the “**Delivery Location**”) using Seller’s standard methods for shipping such Goods. Subject to Section 6. below, Buyer shall accept delivery of the Goods within 1 day of Seller’s written notice that the Goods have been delivered to or made available at the Delivery Location. Buyer shall be responsible for all loading costs and provide equipment, labor, and storage space reasonably suited for receipt of the Goods at the Delivery Location. Seller may, in its sole discretion, without liability or penalty, make partial deliveries of Goods to Buyer. Each delivery will constitute a separate sale, and Buyer shall pay for the units delivered whether such delivery is in whole or partial fulfillment of the Contract Confirmation. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Location, or if Seller is unable to deliver the Goods at the Delivery Location on such date because Buyer has not provided appropriate instructions, documents, licenses, authorizations, equipment, or storage space: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may: (A) store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (*including, without limitation, storage and insurance*); (B) cancel this Contract, in whole or in part, without prejudice to Seller’s other remedies, and (C) extend the delivery period. In addition, Buyer shall pay to Seller all other damages sustained by Seller in connection with Buyer’s breach, including any market difference and any cancellation fee imposed by Seller.

3. **Price.** Buyer shall purchase Goods from Seller at the price stated in the Contract Confirmation (the “**Price**”) and, unless otherwise specified, the Price is exclusive of, and Buyer shall be solely responsible for, all packaging costs, cost of transportation to the Delivery Location, insurance, customs duties and fees, and applicable taxes, including, but not limited to, sales, use or excise taxes. Seller reserves the right to adjust the Price in the event of an order adjustment, including any associated transportation costs, or for subsequent orders.

4. **Title and Risk of Loss.** Title to the Goods and the risk of loss of the Goods passes to Buyer upon Buyer’s or its carrier’s receipt of Goods at the FOB point of origin or at the Delivery Location

5. **Packaging.** All Goods shall be packed for transport in accordance with Seller’s standard methods for transporting such goods.

6. **Inspection and Nonconforming Goods.** Buyer shall inspect the Goods immediately upon delivery of receipt (the “**Inspection Period**”) and either accept or, if such goods are Nonconforming Goods, reject such Goods. Goods are “**Nonconforming Goods**” only if such Goods fail, at the time of delivery at the FOB or Delivery Location, to conform to (a) the minimum specifications agreed upon by the parties in the Contract Confirmation (the “**Specifications**”), or (b) applicable federal, state, local and foreign food safety and labeling laws and regulations. Buyer will be deemed to have accepted the Goods unless it

notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall determine, in its sole discretion, whether the Goods are Nonconforming Goods. If Seller determines that the Goods are Nonconforming Goods, it shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) refund the Price for such Nonconforming Goods actually paid by Buyer to Seller. If Seller delivers to Buyer a quantity of Goods of up to 1% more or less than the quantity set forth in the Contract Confirmation for bagged goods and 3% more or less than the quantity set forth in the Contract Confirmation for commodities and bulk Goods, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall. In the event of such a surplus, Buyer shall pay for such excess Goods the price set forth in the Contract Confirmation adjusted pro rata; in the event of such a shortfall, the order shall be considered filled and Buyer shall pay for such Goods the price set forth in the Contract Confirmation without adjustment. **BUYER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 6. ARE BUYER’S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS, SUBJECT TO BUYER’S RIGHTS UNDER SECTION 10. (G) WITH RESPECT TO ANY NONCONFORMING GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 6. .**

7. **Payment Terms.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery. Buyer shall pay all invoiced amounts due to Seller in accordance with the invoice terms. All payments hereunder must be in U.S. dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. 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 Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof. Seller also has the right, in its sole discretion, to accept or reject any orders of Goods for any reason, including for Buyer’s outstanding payment obligations with respect to previous orders. As additional security for payment of the full price of Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of Buyer’s right, title and interest in, to and under such Goods, wherever located, whether now existing or later arising or acquired, and in all accessions, replacements or modifications to or of such Goods, as well as all proceeds (*including insurance proceeds*) of the foregoing. The security interest granted under this Section is a purchase money security interest.

8. **Suspension of Performance.** If, in Seller’s sole judgment, reasonable doubt exists as to Buyer’s ability to make any payment due to lack of financial responsibility, creditworthiness or otherwise, or if Buyer is past due on a payment of any amount owing to Seller, Seller reserves the right, without liability and without prejudice to any other remedies available to it, to take one or more of the following actions in its sole and absolute discretion: (a) defer all further shipments to Buyer; (b) cancel any unshipped balance of any order to Buyer; or (c) stop any Goods already in transit.

9. **No Setoff.** Buyer shall not withhold payment of any amounts due and payable by reason of any setoff of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy, or otherwise.

10. **Advice.** Unless otherwise expressly agreed in writing by Seller, Seller assumes no obligation or liability for any technical advice provided by Seller regarding the use of Goods furnished to Buyer or for any results occurring due to the application of such advice. Buyer shall have the sole responsibility for the selection and specification of the Goods appropriate for the end use of such Goods.

11. **Limited Warranty.** (a) **Quality.** Seller warrants to Buyer that upon receipt of the Goods by Buyer: (i) the Goods materially conform to the Specifications and meet the minimum standards prescribed by all applicable

federal, state, and local laws and regulations; and (ii) no Goods are adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, *et seq.*) (“**FFDCA**”) or is an article which may not, under the provisions of section 404, 505, or 512 of such Act, be introduced into interstate commerce. (b) **Organic Goods**. To the extent any Goods are required by the Specifications to be organic, at the time of receipt of the Goods by Buyer the Goods comply with the production and handling standards of the United States Department of Agriculture’s National Organic Program. (c) **EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 10. (A)-(B), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** (d) Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by the warranties in Section 10. (a)-(b). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** (e) The Seller shall not be liable for a breach of the warranties set forth in Section 10. (a)-(b) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within 2 days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Goods are defective. (f) The Seller shall not be liable for a breach of the warranties set forth in Section 10. (a)-(b) if: (i) Buyer makes any further use of such Goods after giving such notice; (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 Goods; or (iii) Buyer alters such Goods without the prior written consent of Seller. (g) Subject to Section 10. (e)-(f) above, with respect to any such Goods that do not conform to the warranties in Section 9(a)-(b), Seller shall, in its sole discretion, either: (i) replace such Goods (or the defective part) or (ii) refund the Price of such Goods actually paid by Buyer to Seller. (h) **THE REMEDIES SET FORTH IN SECTION 10. (G) SHALL BE THE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 10. (A)-(B).**

12. **Limitation of Liability.** (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, 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.** (b) **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 GOODS SOLD HEREUNDER.** (c) The limitation of liability set forth in Section 12. (b) above

shall not apply to liability resulting from Seller’s gross negligence or willful misconduct.

13. **Indemnification.** Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, “**Seller Indemnitees**”) against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys’ fees, incurred by Seller Indemnitees (collectively, “**Losses**”), arising out of any use or further distribution of the Goods.

14. **Insurance.** During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers in amounts sufficient to cover any liability arising in connection with Buyer’s purchase, transport, marketing, use and sale of Goods. Buyer acknowledges and agrees that Seller does not maintain insurance coverage with respect to the Goods and is not responsible for any loss or damage with respect thereto following transfer to risk of loss to Buyer.

15. **Waiver.** No provision of the Agreement may be waived or modified without written consent from Seller’s authorized representative. The waiver of any of the terms of the Agreement to be performed by Buyer will not be a waiver of any subsequent failure of Buyer to comply fully with or perform the same or any other term of the Agreement.

16. **Assignment.** Buyer may not assign, transfer, delegate or subcontract its obligations with respect to this Agreement without the prior written consent of Seller’s authorized representative. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Buyer of any of its obligations hereunder.

17. **Dispute Resolution.** All disputes and controversies of any nature whatsoever between Buyer and Seller with respect to the Agreement shall be settled by arbitration administered by the National Grain & Feed Association (“**NGFA**”) in accordance with NGFA’s Trade Rules (the “**NGFA Rules**”) or, if the NGFA Rules are inapplicable or if the NGFA arbitration is unavailable, then by the American Arbitration Association in accordance with its Commercial Arbitration Rules (the “**AAA Rules**”). The decision and award determined under any arbitration will be final and binding on Seller and Buyer. Judgment upon any arbitration award may be entered and enforced in any court having jurisdiction. If, for whatever reason, the NGFA Rules or AAA Rules, as applicable, are determined to be unenforceable by a court of competent jurisdiction, the Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

18. **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.

19. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party’s (“**Impacted Party**”) control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) shortage of adequate power or transportation facilities; (ix) shortages of or delays in receipt of raw materials; and (x) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within ten (10) business days of the Force Majeure Event to the other party, stating the

period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

20. **Relationship of the 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.

21. **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.

22. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.