

## STANDARD TERMS AND CONDITIONS OF PURCHASE – NUTRIFY

1. **Applicability.** The terms and conditions set forth herein (the “**Terms**”), along with each confirmation of sale issued by Buyer (“**Contract Confirmation**”) and, as applicable, purchase order issued by Buyer (“**PO**”) entered into by the parties (collectively, the “**Agreement**”), shall comprise the entire agreement between Nutrify, LLC (“**Buyer**”) and the seller listed on the PO and/or Contract Confirmation (“**Seller**”) for the purchase and sale of conventional and/or organic grains and feed ingredients identified in the PO and/or Contract Confirmation (the “**Goods**”). If no objection is made in writing to these Terms immediately upon Seller’s receipt thereof, Seller will be deemed to have accepted these Terms, effective as of the date of the PO or, as applicable, the Contract Confirmation. No term or condition of this Agreement may be altered or superseded without written consent from Buyer’s authorized representative. Buyer hereby objects to the inclusion of any terms proposed by Seller that are different from or additional to the terms of this Agreement, including but not limited to any terms or conditions contained in Seller’s form purchase order, general terms and conditions of sale or any other document issued by Seller in connection with Buyer’s order of Goods. Buyer’s acceptance of delivery of any Goods shall not constitute acceptance of any terms proposed by Seller.

2. **Shipping Terms.** All Goods shall be delivered to the address specified in the PO or, as applicable, the Contract Confirmation (the “**Delivery Location**”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Buyer may designate any reasonable alternate delivery points if necessary to expedite Seller’s performance of the Agreement, but Buyer shall have no obligation to do so. If Seller is arranging delivery, Seller will ensure all additional Buyer carrier requirements as posted on-site are followed, in addition to Buyer’s environmental, health and safety requirements (“**EHS Requirements**”), as set forth at <https://www.thewengergroup.com/wp-content/uploads/2019/11/Carrier-EHS-Requirements.pdf>, each as may be amended from time to time, which requirements are incorporated herein by reference. Buyer has the right to audit and inspect the records and facilities of Seller and its carriers, and its and their agents, representatives, and subcontractors, to determine compliance with this Agreement, including the EHS Requirements. Seller warrants that its carriers are adequately insured and, in the absence of adequate insurance, agrees to be jointly and severally liable for any damages related to any negligent or more culpable acts or omissions of carriers retained by Seller (including any recklessness or willful misconduct, spills or leaks) in connection with such carriers’ handling and delivery of Goods covered by this Agreement.

3. **Price.** The price of the Goods is the price stated in the PO or, as applicable, the Contract Confirmation (the “**Price**”) and, unless otherwise specified, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties, tariffs and import fees and applicable taxes, including, but not limited to, sales, use or excise taxes. No increase in the Price is effective without the prior written consent of Buyer’s authorized representative. For the avoidance of doubt, all customs duties, tariffs and import fees are to be paid by the importer of record, which shall be the Seller or its third-party appointee.

4. **Title and Risk of Loss.** Title to the Goods and the risk of loss of the Goods passes to Buyer as described in the respective National Grain & Feed Association (“**NGFA**”) Trade Rules.

5. **Delivery Date and Demurrage.** Seller shall schedule with Buyer a mutually agreeable date for the delivery of Goods at least a week in advance of actual delivery (the “**Delivery Date**”). Buyer shall not be responsible for demurrage charges if Seller delivers Goods following a timely notice of one (1) business day in advance of the Delivery Date by Buyer that storage space is full or otherwise unavailable and Buyer is unable to accommodate delivery of the Goods.

6. **Failure to Timely Deliver.** Timely delivery of Goods is of the essence. A delivery of Goods is untimely if all Goods listed on a given PO or, as applicable, Contract Confirmation are not received in full within five (5) business days of the agreed upon Delivery Date. Upon failure by Seller to timely deliver Goods, Buyer may, in its sole discretion: (a) afford Seller additional time to fulfill the applicable PO or Contract Confirmation subject to Seller’s agreement to a mutually agreeable discount on the Price; (b) repurchase the Goods in the open market for Seller’s account, and Seller will pay Buyer any loss and consequential or incidental damages or expenses resulting therefrom; or (c) without further obligation, cancel the Agreement in its entirety without liability or penalty to Buyer and assess a minimum penalty of \$0.20 per unfulfilled bushel.

7. **Packaging.** All Goods shall be packed for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition.

8. **Nonconforming Goods.** Upon failure by Seller to deliver Goods that conform to (a) the minimum specifications issued by Buyer, whether by written notice to Seller through the PO and/or Contract Confirmation, by posting on Buyer’s website (applicable URL to be provided) (the “**Website**”), or otherwise (the “**Specifications**”) or (b) applicable federal, state, local and foreign food safety and labeling laws and regulations; or (c) Buyer’s Carrier EHS Requirements available on [Buyer’s Website](#), or any product that is contaminated, not fit for use, or otherwise in breach of Seller’s representations and warranties hereunder, Buyer may, in its sole discretion: (i) reject the Goods within 24 hours of receipt by phone, followed by written confirmation; (ii) apply discounts to the Price; (iii) repurchase the Goods in the open market for Seller’s account, and Seller will pay Buyer any loss and consequential or incidental damages or expenses resulting therefrom; (iv) require Seller, at its own cost, to promptly replace the Goods and pay for all related expenses, including, but not limited to, transportation for the return of defective or nonconforming Goods to Seller (if permitted by Applicable Laws and regulatory authorities) or dispose of products in a manner acceptable to Buyer and Seller and in all cases in accordance with Applicable Laws, and delivery of replacement Goods to Buyer; or (v) without further obligation, cancel the Agreement or any PO or Contract Confirmation in its entirety without liability or penalty to Buyer. For the avoidance of doubt, Seller shall ensure that it has received and reviewed the applicable Specifications prior to delivering Goods including by requesting a copy of such Specifications from Buyer in writing to the extent Specifications have not been posted to the Website.

9. **Intervening Governmental Action.** Any Goods, irrespective of grade, which are prohibited entry into the United States or otherwise tagged, seized, condemned, the subject of a recall order or request, or declared unfit by any state, federal or other governmental agency may not be applied to fulfill any PO or Contract Confirmation, and ownership of such Goods will remain with Seller. Any Goods or portion thereof which are reasonably determined by Buyer to not be in compliance with the National Organic Program (“NOP”) of the United States Department of Agriculture (“USDA”) may not be applied to fulfill any PO or Contract Confirmation for the purchase of organic Goods, and ownership of such Goods will remain with Seller. Any change in the Price or other terms of any PO or Contract Confirmation caused by any government act or regulation will entitle Buyer to cancel any unshipped portion thereof without liability or penalty.

10. **Payment Terms.** Seller shall issue an invoice to Buyer on or within seven (7) days after the completion of delivery and only in accordance with the Agreement. Buyer shall pay all properly invoiced amounts due to Seller within sixty (60) days after Buyer’s receipt of such invoice, except for any amounts disputed by Buyer in good faith. Buyer has no obligation to pay any fees or expenses invoiced more than six (6) months from the relevant Delivery Date. All payments hereunder must be in U.S. dollars. In the event of a payment dispute, Buyer shall deliver a written statement to Seller no later than ten (10) days prior to the date payment is due on the disputed invoice listing all disputed items. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Agreement notwithstanding any such dispute.

11. **Setoff.** Without limiting any of Buyer’s remedies, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under any PO or Contract Confirmation or any and all other contracts or agreements between Buyer and Seller.

12. **Warranties and Representations.** (a) **General.** Seller warrants to Buyer that: (i) Seller is a merchant, as defined by the Uniform Commercial Code, of the Goods; (ii) Seller maintains at its own expense valid and effective licenses, permits, authorizations, registrations, certifications, permissions and consents necessary for the fulfillment of its obligations under this Agreement; (iii) Seller performs its activities in accordance with, and shall not violate, all laws, regulations, rules, resolutions and/or provisions issued or required by public authorities, including without limitation any and all applicable laws related to the export or import of goods that may now or in the future be imposed by the government of the United States or foreign governments, the laws and implementing regulations of the U.S. Food and Drug Administration (“FDA”) and USDA; and (iv) all Goods which are the subject matter of this Agreement are and will remain free and clear of any penalty, lien, trust, charge, quota, regulation or encumbrance, governmental or otherwise, of any nature whatsoever, including, without limitation, pursuant to the Food Security Act, at the time of sale. (b) **Delivery and Quality.** Seller warrants to Buyer that: (i) the Goods will conform to the Specifications, which are incorporated into this Agreement by reference, are able to pass without objection in trade, and will meet the minimum standards prescribed by the PO and/or Contract Confirmation and all applicable federal, state, local and foreign food safety and labeling laws and regulations of any applicable jurisdiction or applicable court order or settlement agreement, as well as any applicable generally accepted industry standards (“Applicable Law”); (ii) the Goods are and have been free at all times of any

contamination or adulteration, and have not been subject to any spills or leaks; (iii) the Goods will not pose any food safety or quarantine risk to Buyer or Buyer’s customers and the Goods have not been shipped from any area quarantined by the USDA Animal and Plant Health Inspection Service (“APHIS”), and to the extent required, are Generally Recognized as Safe, under sections 201(s) and 409 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 301, *et seq.*) (“FFDCA”); (iv) in the case of imported Goods, no Goods are imported from or through countries in which African Swine Fever has been detected as of the date of the shipment, as specified by USDA-APHIS; (v) the Goods sold are merchantable and fit for sale to U.S. and foreign customers and for their intended use, and all Goods were sold in the condition required by the Specifications and the PO and/or Contract Confirmation; (vi) Seller implements and will provide, upon request, a Food Safety Plan applicable to the Goods; (vii) the Goods have been at all times manufactured, processed, packed, and held using current Good Manufacturing Practices; (viii) Seller has and will continue to engage in adequate biosecurity protocols to control identified hazards, and will provide express written notice to Buyer of all hazards associated with each Good that is not controlled by Seller; (ix) Seller has been and remains registered with the FDA as a food facility, to the extent required by law; (x) Buyer reserves the right to require pre-shipment testing and quality approval samples; (xi) Seller will provide rail or truck cleanout affidavits upon delivery; (xii) no Goods shall be adulterated or misbranded within the meaning of the FFDCA and relevant regulations, or include any article or Goods which may not, under the provisions of section 404, 505, or 512 of such act, be introduced into interstate commerce; (xiii) Goods will have proper documentation including a Certificate of Analysis and a Bill of Lading with a valid PO number; (xiv) Seller agrees to furnish documentation necessary to respond to formal requests for information by CBP and/or the FDA at the request of Buyer or such agency, and Seller will notify Buyer immediately or within 24 hours in the event Seller receives an inquiry from a regulatory authority regarding products sold to Buyer or Seller’s facilities where product sold to Buyer is manufactured, packaged, stored, or otherwise handled; and (xv) Seller will conduct ISF (“10+2”) filing within 48 hours prior to vessel loading. Unless otherwise agreed to, Buyer will be responsible for conducting US Customs entry. In the event that Seller is responsible for conducting US Customs entry, Seller will incur any costs associated therewith. In the event of a rejection by USA authorities for non-conformance of Applicable Laws, Seller shall reimburse Buyer for product cost is responsible for all associated costs including return shipment, testing and quarantine fees, or other costs borne by Buyer. (c) **Organic Goods.** For any Goods required by the Specifications to be organic, Seller warrants to Buyer that: (i) Seller has been and will remain certified under USDA NOP at all times relevant to the production, handling and sale of the Goods to Buyer; (ii) the Goods to be sold hereunder have been labeled as “USDA Organic” in accordance with the requirements of USDA NOP and will comply with the production and handling standards of USDA NOP; (iii) Seller has provided Buyer with an applicable valid and current “certificate of organic operation” with respect to Seller and each of the suppliers or handlers having contact with the Goods prior to delivery; (iv) Seller and any supplier or handler having contact with the Goods prior to their delivery have in effect and will maintain an “organic system plan” under USDA NOP, including, without limitation, specific organic system plan measures designed to prevent fraud and intentional adulteration; (v) the Goods being sold to Buyer contain no quantities of any substance which would exceed or violate the prohibitions set forth in the current “National List” of

prohibited substances in organic production and handling maintained by USDA NOP, including, without limitation, banned pesticide and herbicide residues; (vi) Seller will provide Buyer in advance of delivery a written description of how the Goods will be independently monitored and documented at each transfer point from the relevant USDA NOP Certified Organic farm or growing location through delivery; (vii) in advance of shipment, Seller shall provide an NOP Import Certificate to Buyer for inclusion with the entry documentation submitted to U.S. Customs and Border Patrol (“CBP”), which shall cover all Goods, and shall ensure a unique NOP Import Certificate is issued for each commodity/product or Harmonized Tariff Schedule (“HTS”) code; and (viii) the Goods will be certified to meet “Non-GMO” (Project Verify) standards for animal feed use. (d) These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer and are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer’s discovery of noncompliance with the foregoing warranties.

13. **Limitation of Liability.** (a) IN NO EVENT SHALL BUYER BE LIABLE TO SELLER 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 BUYER 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 BUYER'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.

14. **Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “Buyer 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 or asserted against Buyer and indemnities relating to any claim alleging: (i) breach or non-fulfillment of any warranty or representation set forth in Section 12. of these Terms by Seller or its personnel; (ii) any negligent or more culpable act or omission of Seller, its personnel, or its carriers or delivery providers (including any recklessness or willful misconduct) in connection with the performance of its obligations under the Agreement; (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the willful or negligent acts or omissions of Seller or its personnel, or its carriers or delivery providers; or (iv) any failure by Seller or its personnel to comply with any Applicable Laws.

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

Seller to comply fully with or perform the same or any other term of the Agreement.

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

17. **Dispute Resolution.** Unless otherwise expressly provided herein, this contract shall be governed by and subject to the Trade Rules of the National Grain and Feed Association (“NGFA”), as amended.

Any and all disputes, claims and controversies of any nature whatsoever between Buyer and Seller with respect to Goods purchased under this Agreement that are imported into the United States shall be settled by binding arbitration in accordance with the Grain and Feed Trade Association Arbitration Rules No. 125 (the “GAFTA Rules”), as most recently amended at the time of execution of this Agreement.

All other disputes, claims and controversies of any nature whatsoever between Buyer and Seller with respect to this Agreement, including all disputes, claims and controversies with respect to domestic Goods purchased hereunder, shall be settled by binding arbitration administered by the National Grain & Feed Association (“NGFA”) in accordance with NGFA’s Arbitration 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”), in each case as most recently amended at the time of execution of this Agreement.

Seller and Buyer hereby expressly agree to arbitration in accordance with the terms of this Section 17. 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 GAFTA Rules, 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. **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.

20. **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.

21. **Entire Agreement**. This Agreement and Purchase Confirmation, where applicable, constitute 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.