

STANDARD TERMS AND CONDITIONS

1. **Applicability.** These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the product ("**Goods**") by NS Brands, Ltd. and its subsidiaries ("**Supplier**") to the buyer named in the purchase order covering the sale of Goods ("**Purchase Order**"). The Purchase Order and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

2. **Delivery of Goods.** The Goods will be delivered as established in the Purchase Order. Buyer may not cancel any future delivery of Goods once Purchase Order is executed by Supplier and Buyer. Supplier shall deliver the Goods to the location specified in the Purchase Order (the "**Delivery Point**") using Supplier's standard methods for packaging and shipping such Goods.

3. **Non-Delivery.** Supplier shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Supplier of the non-delivery within five (5) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Supplier for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. **Payment Terms.** Buyer shall pay all invoiced amounts due to Supplier in accordance with the Perishable Agricultural Commodities Act ("PACA"). Buyer shall pay interest on all late payments at the rate of 1.5% per month, calculated daily and compounded monthly or at the maximum legal rate whichever is less. Buyer shall reimburse Supplier for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Supplier.

The perishable agricultural commodities listed on invoices and/or Purchase Orders are sold subject to the statutory trust authorized by Section 5(c) of the PACA, 1930 (7 USC 499(e)(c)). The Supplier of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

5. **Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point.

6. **Inspection and Rejection of Nonconforming Goods.** Buyer shall inspect the Goods upon receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Supplier in writing of any Nonconforming Goods during the Inspection Period. If Buyer timely notifies Supplier of any Nonconforming Goods, Supplier shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.

7. **Price.** Buyer shall purchase the Goods from Supplier at the price (the "**Price**") set forth in the Purchase Order. All Prices 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 unless specified otherwise in the Purchase Order.

8. **Force Majeure.** Neither party shall be liable or responsible to the other party nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Supplier or Buyer including, without limitation, acts of God, crop failure, flood, fire, earthquake, explosion, governmental actions, war, invasion, or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes, power outage, or other delays beyond the reasonable control of Supplier.

9. **Compliance with Suspension Agreement.** The Buyer acknowledges that Supplier is a Signatory to the Suspension Agreement, dated September 19, 2019, between the U.S. Department of Commerce and various Mexican tomato growers/producers with respect to fresh tomatoes grown in the Republic of Mexico (the "Suspension Agreement"). The parties agree to comply fully as required by the Suspension Agreement.

10. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas in each case located in the City of San Antonio and County of Bexar, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

11. **Notices.** All notices, requests, 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 in the Purchase Order or to such other address that may be designated by the receiving party in writing.

12. **Amendment and Modification.** These Terms may only be amended or modified in a writing and is signed by an authorized representative of each party.