

Purchasing Confirmation Terms & Conditions

1. GENERAL
  - A. Acceptance will be deemed to exist if Seller acknowledges this contract (whether or not such acknowledgment contains other or different terms) or by Purchasers acceptance of the product when delivered.
  - B. No amendment, modification, rescission, or waiver of this contract or any of its provisions is valid unless expressly agreed to by Select Custom Solutions, LLC in writing.
2. DELIVERY
  - A. The times stated for delivery are the approximate dates of shipment from Select Custom Solutions, LLC.
  - B. Unless otherwise agreed to by Buyer in any applicable Order, all deliveries shall be made FOB (Incoterms 2020). Transfer of risk shall take place when Buyer has secured materials from the Seller. All pickups and deliveries must be the Goods made during normal business hours to the Buyer's facility indicated in the Order unless otherwise agreed to in writing by Buyer.
  - C. Risk of loss of, damage to, deterioration of, or destruction of the product passes to Buyer upon delivery of the product to Select Custom Solutions, LLC's delivery docks or at the time the product is put into storage pursuant to this Section 2.
  - D. In the event that delivery of the product is delayed by causes within Purchasers control or causes which affect Purchasers ability to receive the product, Select Custom Solutions, LLC may store the product for Purchaser's account and risk at Purchaser's expense. Select Custom Solutions, LLC is not responsible for any deterioration of defects in the product caused by such storage.
  - E. Time is of the essence in the delivery of Goods and Services, and Supplier shall promptly advise Buyer of any anticipated delays. If the Goods or Services are not delivered within the time specified or promised by Supplier, Buyer may, without liability and in addition to any of its other rights and remedies, reject such Goods or Services, cancel the Order and/or purchase substitute items and charge Supplier with any loss or damage incurred. Buyer shall also have the right to claim additional damages from Supplier, in case of total or partial failure of Supplier to execute the Order in accordance with the time schedule of delivery.
  - F. Supplier shall supply a certificate of analysis for each lot of Goods (where applicable) prior to shipment of Goods.
3. PRICES AND QUANTITY
  - A. Supplier shall supply the Goods and/or Services to Buyer at the prices specified in the Order. Supplier warrants that prices shown on the Order shall be complete and no additional charges of any type (e.g. shipping, packaging, labeling, custom duties, etc.) shall be added or borne by Buyer without Buyer's express written consent. Such prices may not be modified or changed without the prior written consent of Buyer.
  - B. Quantity and description of Goods or Services will be specified in the Order. Unless otherwise specifically indicated in the Order, nothing in the Agreement shall constitute a commitment from Buyer to purchase any specific quantity, amount, or type of Goods or Services.
4. REJECTION OF BUYER
  - A. All Goods and Services are subject to inspection and acceptance by Buyer, provided however that Buyer has no such inspection duty prior to use or resale. Payment by Buyer for Goods or Services delivered hereunder shall not constitute acceptance thereof. Buyer may reject any nonconforming or defective Goods or Services that do not comply with the warranties set forth at Paragraph 7.
  - B. Subject to all of Buyer's other rights and remedies, if Buyer rejects any non-conforming or defective Goods, Buyer shall have the right to return such Goods for either full credit or a refund, at Buyer's option. The cost to store, ship and return rejected Goods shall be paid by Supplier.
5. PAYMENT
  - A. All invoices for purchase of Goods or Services hereunder shall be payable by Buyer within 60 days from the receipt of an accurate and complete invoice from Supplier unless a shorter period is agreed to in writing by Buyer in exchange for a discount or other consideration. If an invoice is received by Buyer before delivery of the Goods or Services, the time period for payment of the invoice will not commence until the date the Goods or Services are actually delivered to Buyer. A proper invoice must show the purchase order number, the Buyer's item number, a full description, quantity, and any other information as requested by Buyer or required by law.
6. WARRANTY
  - A. No warranty or guarantee, expressed or implied, is made unless that same is specifically set forth in this contract or other documentation signed by Select Custom Solutions, LLC. However, in such case, such warranty or guarantee is limited by Section 6.
  - B. Supplier hereby represents and warrants to Buyer that the Goods and Services (i) will be manufactured and performed in accordance with all applicable federal, state or provincial laws, regulations, ordinances, or governmental orders, and good manufacturing practices, (ii) are merchantable and fit for their intended purpose, provided that all food products and ingredients shall be fit and sufficient for human consumption, (iii) are marketable, of good quality and free from any defects, (iv) are not adulterated, mislabeled or misbranded, (v) conform to the Specifications and other requirements of the Agreement, (vi) are free and clear of all liens, claims or encumbrances, and (vii) do not violate or infringe any trademarks, patents, copyrights, trade secrets or other intellectual property rights of any third parties.
  - C. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
7. LIMITATION OF LIABILITY AND NOTICE
  - A. In the event of a breach of this contract or any warranty given in connection herewith, Select Custom Solutions, LLC WILL NOT UNDER ANY CIRCUMSTANCES, BE LIABLE FOR DIRECT OR INDIRECT CONSEQUENTIAL DAMAGES INCLUDING LOST PROFITS, OR INCIDENTAL OR SPECIAL DAMAGES. However, Select Custom Solutions, LLC will, at its sole option, require replacement of the product without charge or a refund of the purchase price, provided Select Custom Solutions, LLC gives the Seller written notice that adequately describes the alleged defect of product.
  - B. In no event shall Select Custom Solutions, LLC's liability, whether under contract or warranty, in tort or otherwise, exceed the purchase price of the product.
  - C. Any action for breach of or of this contract of any warranty given in connection herewith must be commenced within one (1) year after the cause of action has accrued.
8. INDEMNIFICATION
  - A. Supplier shall indemnify and hold harmless Buyer from and against any and all claims, demands, damages, losses, liability, or expenses, including without limitation, reasonable attorney's fees and costs of litigation, in any manner arising out of or related to (i) any breach by Supplier of any of its obligations, representations and warranties under the Agreement, (ii) any act or omission of Supplier or its agents, including without limitation, negligence, gross negligence, willful misconduct, fraud or intentional misconduct, and (iii) any claim for personal injury, death or property damages caused by the Goods or Supplier's performance (or nonperformance) of the Services.
9. WAIVER
  - A. Waiver by Select Custom Solutions, LLC. or Seller of a breach of any provision hereof shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect.
10. SOLE AGREEMENT
  - A. These terms and conditions, and all exhibits or attachments, constitute the entire and final agreement between Select Custom Solutions, LLC and Seller ("Seller") for the purchase of product to the exclusion of any prior or contemporaneous statements or writings.
  - B. Inconsistent or different language in the Purchase Order, Order Confirmation, or other documentation is not part of these terms and conditions unless expressly agreed to in writing by Select Custom Solutions, LLC.
11. FORCE MAJEURE
  - A. Neither party shall be liable for any delay or failure of performance due solely to causes beyond its control without its fault or negligence, including without limitation, any act of God, natural disasters, wars, act of terrorism or sabotage; provided that the affected party shall promptly give to the other party a written notice of its inability to observe or perform its obligations hereunder and the reasons therefore, and further uses its best efforts to correct the reason for such delay. If the delay or anticipated delay in Supplier's deliveries impairs its ability to meet its production schedules or otherwise interfere with its operations, Buyer may at its option, and without liability to Supplier, cancel any outstanding deliveries from Supplier in whole or in part.
12. CONSENT TO JURISDICTION AND GOVERNING LAW
  - A. Seller hereby irrevocably submits to the nonexclusive jurisdiction of La Crosse County Circuit Court located in La Crosse, Wisconsin or the US District Court for the Western District of Wisconsin located in Madison, Wisconsin for the adjudication of any matter arising out of or relating to this contract. Seller hereby waives any objection to any action or proceeding in the aforementioned courts on the grounds of improper venue or any claim that said courts are inconvenient forums.
  - B. This contract shall be construed and interpreted according to the laws of the State of Wisconsin without reference to principles of conflict of laws.