



TERMS AND CONDITIONS OF SALE

All transactions where product is purchased from AJC INTERNATIONAL INCORPORATED are subject to the following terms and conditions.

1. *Agreement of Sale*

The Sale Confirmation along with these Terms and Conditions of Sale constitute an acceptance of your purchase order only to the extent it is identical in the description, quantity, price and scheduled delivery and only on the terms and conditions herein. If this Sale Confirmation or Terms and Conditions of Sale are not identical in the description, quantity, price and scheduled delivery, then the Sale Confirmation along with these Terms and Conditions of Sale constitutes an offer to you upon the terms herein. You may accept this Sale Confirmation and these Terms and Conditions of Sale by the earlier of either: (i) signing and returning to us by mail or confirmed fax the acknowledgement copy or (ii) acceptance of delivery of the goods subject to this Sale Confirmation.

If your purchase order or other correspondence, proposal, document or instrument contains terms or conditions contrary to or in addition to the other terms and conditions contained herein, fulfillment of any order by AJC INTERNATIONAL INCORPORATED (i) is not an acceptance of your purchase order, (ii) will not be construed as assent to such contrary or additional terms and conditions, and (iii) will not constitute a waiver by AJC INTERNATIONAL INCORPORATED of any of the terms and conditions contained herein.

These terms and conditions control the sale of all AJC INTERNATIONAL INCORPORATED goods to you from the date hereof regardless of conflict with any other document.

2. *Description*

AJC INTERNATIONAL INCORPORATED cannot ensure that any goods or services purchased from us meet any special quality assurance specifications or other requirements unless expressly accepted in writing by AJC INTERNATIONAL INCORPORATED.

3. *Price*

All amounts due and owing AJC INTERNATIONAL INCORPORATED for the goods in this Sales Confirmation are subject to such payment terms as provided therein. If no payment terms are provided, amounts must be paid within thirty (30) days from the date of any invoice.

Unless otherwise specified in writing by AJC INTERNATIONAL INCORPORATED: (i) all prices, quotations, shipments and deliveries by AJC INTERNATIONAL INCORPORATED are dependent on Incoterms agreed upon; (ii) all orders are accepted subject to AJC INTERNATIONAL INCORPORATED'S price in effect at the time of shipment.

You should furnish to AJC INTERNATIONAL INCORPORATED all tax exemption certificates acceptable to the appropriate taxing authorities. Otherwise, AJC INTERNATIONAL INCORPORATED may pay taxes upon or measured by receipts from sales or services for your account and add it to the price of such goods or services.

You are not authorized to deduct any amounts from the amounts owed AJC INTERNATIONAL

INCORPORATED unless specifically authorized in writing in advance by AJC INTERNATIONAL INCORPORATED.

All orders remain subject to the approval of AJC INTERNATIONAL INCORPORATED'S credit department prior to delivery. AJC INTERNATIONAL INCORPORATED policies or practices may be changed at any time.

4. Delivery

Unless otherwise specified in this Sales Confirmation, AJC INTERNATIONAL INCORPORATED will deliver the goods as per the Incoterms of purchase. All tariffs levied by the importing country irrespective of selling Incoterm shall be borne by the buyer. All risk of loss, damage or charge pass to you upon delivery to the carrier.

AJC INTERNATIONAL INCORPORATED does not guarantee ocean carrier will perform the voyage according to advertised schedule. The ocean carrier does not promise or undertake to load, carry or discharge the goods on or by any particular vessel, date or time. Advertised sailings and arrivals are only estimated times, and such schedules may be advanced, delayed or cancelled without notice by the ocean carrier.

Any direct or consequential cost or damages arising from any carrier equipment shortages, delay in scheduled departures, or arrivals of any vessel used to transport the goods to its intended destination should be borne by you (Buyer).

You (Buyer) shall fully indemnify and hold AJC INTERNATIONAL INCORPORATED harmless against any and all damages or costs arising from the carrier's actions, taken at its sole discretion, to exercise its right under the Terms and Conditions of the bill of lading, to suspend, divert and/or cease carriage.

Your signature on carrier's bill of lading or receipt of shipment, without exemptions, constitutes your acceptance of the goods in this Sales Confirmation.

Unless otherwise specified in writing by AJC INTERNATIONAL INCORPORATED, we reserve the right to ship all or any part of the goods specified in separate lots in any order from any of our suppliers or vendors facilities. Payment for any lot is due upon the tender of delivery of each such lot in accordance with AJC INTERNATIONAL INCORPORATED'S credit terms in effect on date of delivery.

Shipment and delivery are subject to restriction or condition imposed by or on behalf of the United States or any other governmental body with appropriate jurisdiction which may prevent or interfere with fulfillment of any order by AJC INTERNATIONAL INCORPORATED.

Any certification of the goods by the U.S. Department of Agriculture, Meat Inspection Division, the U.S. Food and Drug Administration or any other similar foreign, federal, state or local government authority or agency constitutes conclusive proof the goods in this Sales Confirmation are sound.

5. Title

Title to the goods under this Sale Confirmation passes to you upon acceptance of the Sales Confirmation and Terms and Conditions and execution of this transaction under specified Incoterms.

Once title passes to you, you grant to AJC INTERNATIONAL INCORPORATED a security interest in all goods in this Sales Confirmation (and all proceeds therefrom) as security for full payment and agree to execute and deliver one or more Uniform Commercial Code financing statements, security agreements and such other documents as may be requested by AJC INTERNATIONAL INCORPORATED as evidence of and to perfect the security interest hereby granted.

6. Force Majeure

Notwithstanding any other provision of this Sales Confirmation, to the extent AJC INTERNATIONAL INCORPORATED fails to satisfy any obligation imposed hereunder as a result of any force majeure, performance of this Sales Confirmation will be deemed frustrated and no cause of action for breach or default will arise or liability attach to or be imposed on AJC INTERNATIONAL INCORPORATED as a consequence thereof. For the purposes of this Sales Confirmation, "force majeure" means any one of the following: strikes, work stoppages, lockouts or exceptional circumstances arising from the threat thereof, acts of God, acts of the state or the public enemy, including but not limited to war, acts of nations, acts of governments, acts of independent states, terroristic acts, riots, civil disorder or insurrection, animal and vegetable health or safety issues, embargoes, or other disruption of or interference with trade, marine disaster, fire, accident, or other circumstance or cause beyond our control.

AJC INTERNATIONAL INCORPORATED may delay shipment or delivery of some or all goods by reason of any force majeure. AJC INTERNATIONAL INCORPORATED will notify you at the address set forth on the face hereof within a commercially reasonable period of time in the event of any delay in shipment, delivery or shortage of goods.

7. Warranties

AJC INTERNATIONAL INCORPORATED warrants to you that the goods delivered under this Sales Confirmation will, at the time and place of delivery, be of merchantable quality of such nature as to pass in the trade under the contract description. EXCEPT AS SET FORTH HEREIN, AJC INTERNATIONAL INCORPORATED MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES PROVIDED HEREIN, AND THE OBLIGATIONS AND LIABILITIES OF AJC INTERNATIONAL INCORPORATED HEREUNDER ARE IN LIEU OF, AND YOU EXPRESSLY WAIVE, ALL OTHER WARRANTIES, GUARANTEES OR LIABILITIES (INCLUDING WITHOUT LIMITATION, ANY PRODUCT LIABILITY), EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE.

You will use your best efforts to minimize any damage to goods rightfully rejected or for which there has been a breach of warranty and to make reasonable efforts to sell the goods for our account at full reasonable value.

8. Termination

Termination by Purchaser

8.1.1 You may terminate any agreement arising under this Sales Confirmation only upon AJC INTERNATIONAL INCORPORATED'S failure to cure within thirty (30) days of receipt of written notice of breach from you stating with reasonable particularity the facts thereof.

8.1.2 In the event of rightful termination by you for breach by AJC INTERNATIONAL INCORPORATED, such agreement will end and you will have no further obligation to AJC INTERNATIONAL INCORPORATED except as expressly provided herein.

Termination by AJC INTERNATIONAL INCORPORATED

8.2.1 AJC INTERNATIONAL INCORPORATED may terminate any agreement arising under this Sales Confirmation or such other contract between you and AJC INTERNATIONAL INCORPORATED (i) upon your failure to cure within thirty (30) days of receipt of written notice of breach from AJC INTERNATIONAL INCORPORATED stating with reasonable particularity the facts thereof, or (ii) immediately upon your failure to perform or promptly provide reasonable assurance of future performance upon request.

8.2.1 AJC INTERNATIONAL INCORPORATED may immediately terminate any agreement

arising under this Sales Confirmation or such other contract between you and AJC INTERNATIONAL INCORPORATED (i) if you fail to comply with the terms and conditions hereof or with the terms and conditions of any other contract with AJC INTERNATIONAL INCORPORATED; (ii) your credit has otherwise become impaired or unsatisfactory to AJC INTERNATIONAL INCORPORATED.

8.2.2 In the event of termination by AJC INTERNATIONAL INCORPORATED for breach by you or failure to perform, such agreement will end and AJC INTERNATIONAL INCORPORATED will have no further obligation to you except as expressly provided herein. All amounts paid by you prior to such termination, including without limitation any prepayment for the goods in this Sales Confirmation, shall be retained by AJC INTERNATIONAL INCORPORATED. Such amounts shall not constitute liquidated damages and AJC INTERNATIONAL INCORPORATED will be entitled to such rights and remedies afforded to AJC INTERNATIONAL INCORPORATED for breach of contract under the Uniform Commercial Code as enacted in the State of Georgia or under any applicable law.

9. Limitations of Liability

If you make a claim for defect of goods sold under this Sales Confirmation, you must preserve the goods intact under proper refrigeration and afford AJC INTERNATIONAL INCORPORATED the opportunity to inspect the goods before they have been further handled, processed or otherwise dealt with.

YOUR SOLE AND EXCLUSIVE REMEDY UPON REJECTION OF ANY SHIPMENT OR PART THEREOF FOR NONCONFORMANCE OR BREACH OF WARRANTY SHALL BE, AT AJC INTERNATIONAL INCORPORATED'S OPTION, THE REPLACEMENT OF THE REJECTED GOODS OR A REFUND OF THE PURCHASE PRICE. UNDER NO CIRCUMSTANCES IS AJC INTERNATIONAL INCORPORATED LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DAMAGES FOR LOSS OF BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, OTHER PECUNIARY LOSS, OR OTHER INCIDENTAL, TORT, ECONOMIC, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF ANY WARRANTY EVEN IF AJC INTERNATIONAL INCORPORATED OR ITS AFFILIATES HAVE BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

No claim by you entitles you to withhold payment of any sum due to AJC INTERNATIONAL INCORPORATED under this Sales Confirmation or any other agreement, or give you any right of set off against other payments due from you to AJC INTERNATIONAL INCORPORATED.

Any action by you resulting from any breach on the part of AJC INTERNATIONAL INCORPORATED arising out of this Sales Confirmation must be commenced by you within one (1) year after the cause of action has accrued.

10. Arbitration

At AJC INTERNATIONAL INCORPORATED'S option, any controversy or claim arising out of or relating to this Sales Confirmation, or the breach thereof, must be settled by binding arbitration in Atlanta, Georgia. Such binding arbitration will be conducted in the English language in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s), may be entered in any court having jurisdiction thereof.

11. Legal Notice re Trademarks

As a condition precedent to Seller's willingness to sell, and as consideration for Seller's willingness to sell to Buyer, Buyer acknowledges and agrees that **AJC, AJC INTERNATIONAL, AMERIFOODS, DEL CAMPO, EARLY DAWN, GARDEN MAID, GOLDEN PHOENIX, MITY FRESH, and ODS OVERSEAS DISTRIBUTION SOLUTIONS (the "Marks")**, and their associated designs¹ shown

below, are trademarks of AJC. These trademarks are registered in many, but not all countries, of the world. Buyer agrees and acknowledges that the **Marks** are the sole and exclusive property of AJC, regardless of whether they are registered in any particular country including the country of this sale.

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Buyer agrees that it will not itself claim trademark rights in any of the **Marks**; that it will not register or attempt to register any of these **Marks** in its own name (or any name other than AJC) in any country, including the country of this sale. Buyer agrees and acknowledges that any use it makes of these **Marks** will be as a licensee of AJC and that any such use will inure to the benefit of AJC solely.

Buyer further agrees that it will not register domain names the include any of the words contained in any of the marks **Marks**. The prohibition applies to all Top Level Domains or country code level domains.

If Buyer has previously acquired or in the future acquires any rights in these **Marks** or any domain names incorporating words contained in the **Marks**, whether by registration with a governmental authority, a domain name registrar or by virtue of use that gives rise to any legal rights, then Buyer will transfer and assign all rights to such rights, registrations or domain names to AJC. Buyer further agrees to execute all documents necessary to perfect any transfer of such rights, registrations or domain names as may be required by any relevant governmental or private authority.

12. Miscellaneous

The Sales Confirmation and any agreement thereunder is governed and construed in accordance with the laws of the State of Georgia.

The Sales Confirmation and such terms and conditions herein constitute the entire agreement between AJC INTERNATIONAL INCORPORATED and you, superseding any and all other understandings, representations, proposals or negotiations between the parties, whether oral or written. No oral agreements or representations and no course of dealings between the parties or usage of trade is relevant to supplement, explain, contradict or vary in any way any provision contained in this Sales Confirmation and these terms and conditions.

None of the terms and conditions contained in this Sales Confirmation or these terms and conditions may be added to, modified, superseded or otherwise altered except by a written instrument signed by AJC INTERNATIONAL INCORPORATED and you.

All notices allowed or required under this Sales Confirmation must be in writing and is deemed sufficient if sent to the parties at the addresses given in this Sales Confirmation (or to such other address as either party may provide in advance) (i) by personal delivery, (ii) by registered or certified mail, postage prepaid, (iii) by first class air mail, postage prepaid (for international mail), (iv) by facsimile, telex or telegraph or (v) by recognized overnight carrier. Notice shall be deemed given upon earliest receipt by any method provided herein.

Each of the rights and remedies reserved by AJC INTERNATIONAL INCORPORATED in this Sales Confirmation is cumulative and in addition to any other or further remedies provided by law or equity, or in this Sales Confirmation.

AJC INTERNATIONAL INCORPORATED'S failure to insist on performance of any of the terms or

conditions herein by you, our failure to exercise any right or privilege, or our waiver of any breach under this Sales Confirmation does not thereafter waive any other terms, conditions, privileges or breach, whether of the same or similar type. Any waiver is effective only when in writing and signed by AJC INTERNATIONAL INCORPORATED.

Your rights and obligations under this Sales Confirmation may neither be assigned, delegated nor subcontracted without the prior written consent of AJC INTERNATIONAL INCORPORATED.

Wherever possible, each provision of this Sales Confirmation will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Sales Confirmation is prohibited by or invalid under applicable law, said provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Sales Confirmation.

Time is therefore of the essence of this Sales Confirmation.