

Additional Terms & Conditions

1. Acknowledgement copy of this purchase offer with price and shipping date must be completed and returned to Buyer within ten (10) days.
2. Seller's name and Buyer's purchase order number and Buyer's release order if any, must be clearly indicated on all invoices, packages, shipping documents and correspondence.
3. The goods or services ordered hereby shall be furnished at the price specified. If no price is specified, Seller agrees, by acceptance of this order, to furnish such goods or services at the lower of the price previously charged the Buyer for similar goods or services, or the lowest prevailing market price, whichever is lower. Seller warrants that during the period of this purchase order it will not sell nor offer to sell to others the goods or services set forth on the face of the purchase order at prices or terms more favorable to Seller's other customers than those stated herein without making comparable adjustments in prices and terms to Buyer.
4. Invoices, in duplicate, designating FReal Foods, LLC as Buyer, must be mailed to Buyer and contain full description of goods. Invoices must be accompanied by all documents of title, if any, properly endorsed to order of Buyer, including, but not limited to, original straight bills of lading prepaid freight bills and express or original signed delivery receipts.
5. Title to goods shall pass directly from Seller to Buyer. Title to goods shall transfer to and vest in Buyer at time of receipt of goods and of documents of title, if any, by Buyer at place of delivery indicate on face side hereof, provided approval for goods has been obtained by Seller from all necessary departments, agencies and bureaus of the government of the United States of America and from any other state, local or foreign jurisdiction. In the event such approval has not been obtained prior to the time of receipt of goods by buyer, then title to goods shall transfer to and vest in Buyer once required approval is obtained.
6. Seller shall bear all risk of loss of goods until title to goods is transferred to and vested in Buyer as provided in paragraph number "5" herein. Seller shall also bear all risk of loss upon rejection or non-acceptance of goods. All goods are subject to inspection and acceptance by Buyer within a reasonable time after delivery, notwithstanding any payment on account thereof. Any goods not conforming to this purchase order will be returned at Seller's expense.
7. Cost of delivery shall be paid by Seller or Buyer as indicated on face side hereof. Seller shall ship goods by the most economical form of transportation and route as required by the delivery date, if any. If refrigeration, protection against cold or the like is required to preserve goods, Seller will arrange with the Carrier for it. Excess transportation costs if any, resulting from a deviation from the terms hereof shall be paid by seller.
8. Periods during which Buyer may avail itself of discounts afforded by Seller for prompt payment shall commence when Seller has complied with the provisions in the paragraphs herein numbers "4" and "5".
9. Seller guarantees, warrants and represents that goods shall conform to the description of same on the face hereof and that goods: (i) shall be of good quality, design, materials and workmanship and free from defects; (ii) shall conform to all applicable specifications, drawings, or descriptions; (iii) shall be merchantable and suitable for their intended purposes; and (iv) shall be free of any claim of any third party and any lien or encumbrance. These warranties apply whether or not Seller is a merchant with respect to such goods. Buyer's inspection, acceptance or retention of or its payment for goods shall not constitute a waiver of any of Seller's warranties. Seller's warranties shall survive the termination of the purchase order and Seller's delivery of goods or services pursuant to the purchase order. Buyer's approval of any sample or acceptance of any goods shall not relieve Seller from its responsibility to deliver goods in conformity with all terms of the applicable purchase order. Any applicable manufacturer's warranty and any warranty of Seller shall be passed through to Buyer and any end user. Seller shall not make any material changes to the product or processes involved in the handling of the product without providing thirty (30) days written notice to Buyer. Buyer reserves the right to terminate without penalty, any purchase orders in effect at the time o notice of such material change.
10. To the fullest extent permitted by law, Seller agrees to indemnify, defend and hold Buyer, its officers, directors, agents, representatives, and employees harmless from and against all liabilities, losses, claims, settlement payments, costs and expenses, interest awards, judgments, damages (including punitive damages), diminution in value, fines, fees and penalties or other charges, including, but not limited to, reasonable attorneys' and witness fees and court costs arising out of or in any way connected with any damage or injury that results from a material change in the product or process relating to the product, including, but not limited to, any resulting inaccurate labeling. Seller shall remedy and cure any defects in the goods at the sole cost and expense of Seller. Seller shall indemnify, defend and hold Buyer, its officers, directors, agents, representatives and employees harmless from and against all liabilities, losses, claims, settlement payments, costs and expenses, interest awards, judgments, damages (including punitive damages), diminution in value, fines, fees and penalties or other charges, including, but not limited to, reasonable attorneys' and witness fees and court costs arising out of or in any way connected with any such defect including without limitation, damage to property and personal injury. Further, Seller shall indemnify, defend and hold Buyer, its officers, directors, agents, representatives and employees harmless from and against all liabilities, losses, claims, settlement payments, costs and expenses, interest awards, judgments, damages (including punitive damages), diminution in value, fines, fees and penalties or other charges, including, but not limited to, reasonable attorneys' and witness fees and court costs arising out of or in any way connected with Seller's act or neglect in fulfilling this purchase order, including, without limitation, damage or injury of any kind or nature, to persons whether employees or agents of Seller or otherwise.

11. Seller shall make delivery of goods within the time indicated on the face side hereof. If Seller does not make delivery within the specified time, or if none be specified within ten (10) days of receipt of Buyer's release order, or if all or a portion of goods delivered are not entirely satisfactory to Buyer or in compliance with the terms of this purchase order, Buyer may cancel this purchase order as to all or a portion of goods and return them to Seller at Seller's sole expense Rejected goods shall not be replaced unless Buyer so requests in writing Quantity discounts if any, shall not be reduced as a result of the return of rejected goods.
12. Acceptance by Buyer of all or part of goods shall not constitute a waiver of Buyer's right to reject or revoke acceptance of the goods, which right may be exercised both before and after delivery; nor shall such acceptance waive any claims of Buyer for breach of warranty delays in delivery or noncompliance with other terms of the purchase order.
13. Time is of the essence with respect to Buyer's obtaining proper goods ordered pursuant to the terms hereof.
14. Buyer may terminate, cancel or modify the quantity of delivery terms (i) as to deliverables that have not yet been accepted, at any time and for any reason, by written notice to Seller; or (ii) immediately upon the bankruptcy or insolvency of Seller or Seller's breach of these terms. If Seller is not in breach of these terms, Buyer will pay a reasonable price for deliverables accepted on or before the date of cancellation or termination. Buyer is not liable for any other costs, expenses, losses, damages or liabilities arising out of such cancellation or termination. Termination or cancellation will not alter or terminate any of the parties' obligations under any section of the terms that by its nature extend beyond the termination of these terms.
15. No assignment of this purchase order shall be made without Buyer's written consent, which may be withheld for any or no reason and an assignment without such consent shall be null and void.
16. Each and every article comprising each shipment or other delivery is hereby guaranteed as of the date of such shipment or delivery to be, on such date, in compliance with the Federal Food, Drug and Cosmetic Act. Without limiting the foregoing, product shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act. Processing methods for food, ingredients, processing aids, and food contact materials must be in accordance with Current Good Manufacturing Practices. Seller warrants that the Products do not contain any residues or agricultural chemicals which are not approved for use in the community involved in this purchase order, or amounts in excess of those tolerances established by federal, state and local regulatory agencies in the United States and Canada in addition, heavy metals and all other foreign substances shall not exceed tolerances established by federal, state and local regulatory agencies for the commodity involved in this purchase order.
17. Seller guarantees that all color additives (where color additives require certification) are from batches certified in accordance with applicable regulations promulgated under the Federal Food, Drug and Cosmetic Act.
18. If shipment or delivery is from a foreign manufacturer, then both the manufacturer and an agent of the manufacturer and an agent of the manufacturer residing in the United States jointly and severally undertake all guarantees under this purchase order. Seller warrants and represents that if goods were from foreign origin, Seller has fully complied with the customs laws of the country of import properly valued and declared the goods and paid all sums required to be paid for their lawful importation.
19. Buyer may cancel its obligation hereunder to receive the goods upon Buyer being subject to a strike, labor unrest, riot, civil disorder, fire, war conditions or Governmental acts or regulations or other causes beyond its control which prevents Buyer from conducting its daily business.
20. Any attempt by Seller to vary, in any degree, any of the terms of this offer in Seller's acceptance shall not operate as a rejection of this offer unless such variance is in the terms of the description, quantity, price or delivery schedule, but shall be deemed a material alteration thereof and this offer shall be deemed accepted by Seller without said additional or different terms.
21. Seller shall maintain such insurance in compliance with statutory Workers' Compensation Acts and against all claims for damages, including bodily injury and property damage which may arise from fulfilling this purchase order. Insurance policies for such damages shall be at a minimum of \$1,000,000 with insurer(s) having a financial rating with A M Best's of A- and a size category of X or equivalent and include FReal Foods, LLC, et al as an additional insured.
22. This purchase order and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of New York and the UCC. The parties agree that the exclusive jurisdiction of any dispute arising in connection with the purchase order shall be in the State and Federal courts of the County of Erie, New York State. Any action brought by Seller against Buyer with respect to this purchase order shall be filed in one of the above reference jurisdictions within one (1) year after the cause of action arises.
23. Any additional or different terms which may be contained in any documents furnished by the Seller are hereby objected to and rejected.
24. Should any provision of this terms be held by a court of law, or other body having proper jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of these terms shall not be affected or impaired thereby and the parties agree that partial enforcement of these terms or revisions of the illegal invalid or unenforceable provision is appropriate.
25. These terms constitute the entire agreement between the parties as to the subject matter thereof, and maybe modified, or any right waived, only by a written document signed by the party to be charged that specifically references these terms and the section(s) so modified.

CERTIFICATION OF EEO COMPLIANCE

Pursuant to Executive Orders 11246, 11625, 11701, 11758, and 13496, the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Rehabilitation Act of 1973 and the Small Business Act of 1958, all as amended, we are required to obtain certain commitments from our suppliers of goods and services unless otherwise exempt by applicable provisions of the Federal Laws, Regulations and Executive Orders referred to herein. The undersigned certifies as follows:

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. NON-SEGREGATED FACILITIES (Applicable to orders of \$10,000 or more) Seller does not and will not maintain segregated facilities as described in Executive Order 11246 and in 41 CFR 60-1.8. 2. EQUAL OPPORTUNITY CLAUSE: (Applicable to orders of \$10,000 or more) Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Seller will post EEO notices in conspicuous places available to employees and applicants. Seller shall comply with the provisions of Executive Order 11246, Section 204, paragraphs. (1) through (7), and 41 CFR 60-1 through 60-50 3. AFFIRMATIVE ACTION COMPLIANCE PROGRAM (Applicable to orders of \$50,000 or more if the Seller has 50 or more employees) Seller shall have a written affirmative action compliance program for each of its establishments, as provided in 41 CFR 60-1.4 and 41 CFR 60-2 as amended. 4. EQUAL OPPORTUNITY REPORTING (Applicable to orders of \$50,000 or more). Seller shall annually complete and file Government Standard form 100, Equal Opportunity Employer Information Report EEO-1. 5. LISTING OF EMPLOYMENT OPENINGS FOR VETERANS (Applicable to orders of \$10,000 or more). Seller agrees that all suitable employment openings which currently exist and those which occur during the performance of this order shall be listed at an appropriate office of the State employment service system. Seller shall comply with the provisions of Executive Order 11701, Section 402 of the Vietnam Era Veterans Readjustment Act of 1974 and 41 CFR 60-250 and 60-300. Any seller with contracts of \$25,000 or more must file VETS-100 annually. Any seller with contracts of \$100,000 or more or 50 or more employees must maintain a written VEVRAA affirmative action program. | <ol style="list-style-type: none"> 6. EMPLOYMENT OF THE HANDICAPPED (Applicable to orders of \$10,000 or more) Seller shall not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant is qualified. Seller agrees to comply with the provisions of Executive Order 11758, Section 503 of the Rehabilitation Act of 1973 and 41 CFR 60-741 and 60-742. Sellers with 50 or more employees or a contract of \$50,000 or more shall maintain a written 503 affirmative action program. 7. UTILIZATION OF MINORITY BUSINESS ENTERPRISES (Generally applicable to domestic orders of \$5,000 or more) Seller agrees to carry out the provisions of Executive Order 11625 and 41 CFR 1-1310 2. 8. MINORITY BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM (Applicable to orders of \$500,000 or more) Seller agrees to establish and conduct a program which will enable minority business enterprises, and defined in 41 CFR 101 310-2(b) to be considered fairly as subcontractors and suppliers and shall comply with the provisions of 41 CFR 101 310-2(b). 9. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS Seller agrees to carry out the provisions of 29 CFR 471 Appendix A to Subpart A. 10. The Equal Employment Opportunity Clause required under Executive Order 11246, the employee notice clause pertaining to employee rights under the National Labor Relations Act, set forth in 29 CFR Part 471 Appendix A to Subpart A, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this purchase order. By accepting this purchase order, vendor certifies that, to the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). *This regulation prohibits the discrimination against qualified protected veterans and qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities*, that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8. |
|--|--|