

f' Real! Foods, LLC

Additional Terms and Conditions

1. Prompt acceptance of this Purchase Order is requested. Delivery or commencement of work hereunder shall also constitute acceptance of this Purchase Order and all its terms by Seller. This Purchase Order is the final, complete and exclusive statement of the agreement between the parties and may not be modified, contradicted, supplemented, explained or waived by parol evidence, Seller's acknowledgments, a course of dealing, or in any other way except in a writing signed by an authorized representative of Buyer. Any references in this Purchase Order to Seller's proposal or quotation are only to describe the materials or work covered hereby, and this Purchase Order does not constitute an acceptance of any terms set forth therein. Any attempt by Seller to vary, in any degree, any of the terms of this offer in Seller's acceptance (a) are hereby rejected and (b) shall not operate as a rejection of this offer but shall be deemed a material alteration thereof and this offer shall be deemed accepted by Seller without said additional or different terms.

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. Goods and/or services ordered will be furnished at the price specified. If no price is specified, then Seller will furnish such goods and/or services at the lower of the price previously charged by Seller for similar goods or services, or the lowest prevailing market price, whichever is lower.

3. Invoices must be mailed to Buyer and contain a full description of goods and services. Invoices must be accompanied by all documents of title, if any, properly endorsed to order of Buyer. Periods during which Buyer may avail itself of discounts afforded by Seller for prompt payment shall commence when Seller has complied with all provisions hereunder.

4. 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 indicated on the Purchase Order, 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.

5. Seller shall bear all risk of loss of goods until title to goods is transferred to and vested in Buyer. 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.

6. Cost of delivery shall be paid by Seller or Buyer, as indicated on this Purchase Order. 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.

7. Seller guarantees, warrants and represents that goods shall conform to the description of same on the Purchase Order: (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. For any services to be provided by Seller, Seller warrants that it has the appropriate technical skills, necessary to provide services and shall perform services and all obligations hereunder in a workmanlike manner and in accordance with applicable industry standards. Seller's warranties shall survive the termination of the Purchase Order and Seller's delivery of goods or services pursuant hereto. 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 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 of notice of such material change.

8. 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, 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 the negligence or willful misconduct of Seller, including, without limitation, those arising from: (i) defects in material, workmanship or design of the goods or services furnished hereunder, (ii) violations of federal, state, or local law, (iii) personal injury, death and property damage, (iv) infringement by goods or services provided to Buyer of any third party intellectual property, and (v) the breach by Seller of any of its representations, warranties or covenants hereunder.

9. Seller shall make delivery of goods and/or services within the time indicated on the Purchase Order. If Seller does not make delivery within the specified time, or if none is specified, within ten (10) days of receipt of Purchase Order, or if all or a portion of goods delivered are not in compliance with the terms of the 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.

10. 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.

11. Time is of the essence for this Purchase Order. It is essential that this Purchase Order be performed and filled on the specified date(s) and that the work progress in a timely fashion. Deliveries shall be made both in the quantities and at the times specified in schedules furnished by Buyer. Buyer reserves the right to change delivery schedules or direct a temporary suspension of scheduled shipment(s). Seller shall immediately give written notice to Buyer setting forth the reason and extent of any anticipated delay in any scheduled shipment(s).

CERTIFICATION OF EEO COMPLIANCE

Pursuant to Executive Orders 11625, 11701, 11758, 13201, 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, Seller, unless otherwise exempt by applicable provisions of the Federal Laws, Regulations and Executive Orders referred to herein certifies as follows:

1. NON-SEGREGATED FACILITIES (Applicable to orders of 10,000 or more) Seller does not and will not maintain segregated facilities in violation of the Federal non-discrimination laws.
2. 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.
3. 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 60-2504. Any seller with contracts of \$25,000 or more must file VETS-100 annually.
4. 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.
5. 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 1-1 1310 2
6. 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, as defined in 41 CFR 101 310-2(b) to be

12. Buyer may terminate or cancel this Purchase Order at any time and for any reason by providing three (3) days' 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 notice 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 that by its nature extends beyond the termination of Purchase Order.

13. This Purchase Order is issued to Seller in reliance on Seller's personal performance, and Seller may not assign this Purchase Order or the payment of any sums due hereunder or subcontract any substantial part of the performance or work, except with Buyer's prior written approval.

14. 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 ("FDC"). Without limiting the foregoing, product shall not be adulterated or misbranded within the meaning of the FDC. 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. Seller guarantees that all color additives (where color additives require certification) are from batches certified in accordance with applicable regulations promulgated under the FDC.

15. Seller warrants that it shall meet and otherwise comply with all applicable federal, state, municipal and local laws, rules, regulations, ordinances, guidelines, and standards, including without limitation, safety, health and environmental laws and standards of the Occupational Safety and Health Act of 1970, as amended, executive orders relating to equal opportunity and non-discrimination in employment, and the Foreign Corrupt Practices Act. Seller further agrees to comply with Buyer's Contractor Compliance Program and Buyer's Supplier Code of Conduct. Seller will be solely responsible for initiating, maintaining, and supervising the safety and health of its personnel, its subcontractors' personnel, and all other persons required or involved with the goods and/or services provided by Seller hereunder.

16. 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.

17. Seller may gain access to certain confidential and secret information of Buyer, including, but not limited to non-public information regarding its business, customers, vendors, partners, products, plants, waste, standards, programs, equipment, finances, intellectual property, marketing plans, competitors, manufacturing processes, packaging, specifications, and general business information ("Confidential Information"). Seller agrees not to use or disclose any Confidential Information, except as authorized in writing by Buyer.

18. Buyer may cancel its obligation hereunder to receive the goods and/or services upon Buyer being subject to a strike, labor unrest, riot, civil disorder, fire, epidemic, pandemic, war conditions or Governmental acts or regulations or other causes beyond its control which prevents Buyer from conducting its daily business or renders it commercially impractical for Buyer to do so.

19. Seller shall maintain insurance with the following minimum coverage: (a) \$5,000,000 general liability or in combination with Umbrella/Excell Liability to meet the required limits, with waiver of subrogation in favor of Buyer if Seller is negligent; (b) workers compensation at statutory limits, with a waiver of subrogation in favor of Buyer, and \$1,000,000 employer's liability, and (c) auto liability with minimum combined single limits of \$1,000,000. Ingredient suppliers and Contract Manufacturers are also required to carry Product Recall insurance with minimum limits of \$5,000,000 for 1st & 3rd party losses. Motor Carriers are also required to carry Contingent Cargo with limits of \$100,000. Coverage to be kept with insurer(s) having a financial rating with A M Best's of A- or better and a size category of X or equivalent and include Buyer, et al as an additional insured via broad form endorsement or equivalent.

20. 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 Uniform Commercial Code as in effect in New York State. 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.

21. Any notice required or permitted to be given to one party by the other party pursuant to this Purchase Order shall be in writing and shall be personally delivered or sent by United States Mail, certified or registered, postage prepaid. All notices to Buyer shall be sent to: Rich Products Corporation, Attention: Legal Department, One Robert Rich Way, Buffalo, New York 14213.

22. Should any provision of this Purchase Order 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 revision of the illegal invalid or unenforceable provision is appropriate.

23. These terms constitute the entire agreement between the parties as to the subject matter thereof, and may be modified, or any right waived, only by a written document signed by the parties. Upon termination or expiration of this Purchase Order, all provisions whose meaning requires them to survive will survive, including, without limitation, all provisions of confidentiality, non-use, and indemnification.

considered fairly as subcontractors and suppliers and shall comply with the provisions of 41 CFR 101 310-2(b).

7. POSTING "NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES" (Applicable to orders of \$100,000) Unless a waiver has been obtained from the Office of Labor Management Standards ("OLMS") or the Seller otherwise meets the exemption criteria contained in Executive Order 13201, Seller agrees to post in a conspicuous manner in each of its facilities a "Notice of Employee Rights Concerning Payment of Union Dues or Fees" as required in Executive Order 13201.
8. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS Seller agrees to carry out the provisions of 29 CFR 471 Appendix A to Subpart A.
9. 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, is 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). These regulations prohibit the discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to protected veteran status or disability, that it complies with the authorities cited above.