

## FRANKLIN FARMS EAST

### TERMS AND CONDITIONS

#### 1. DEFINITIONS:

The term "Seller" as used herein shall refer to FRANKLIN FARMS EAST, INC. The term "BUYER" as used herein shall refer to the customer designated on a Seller Order which shall always incorporate by reference these "TERMS AND CONDITIONS". The term "CONTRACT" as used herein shall refer to the terms, conditions and warranties contained in the document.

#### 2. PRODUCTS AND SALES TERMS:

BUYER agrees to purchase and SELLER agrees to sell products specified in Seller's Order Confirmation under the terms of this document. Any terms or conditions in addition to or different from this document asserted by Buyer as applicable to this transaction, in a purchase order, on a website or otherwise incorporated by reference (including general or specific conditions, specifications, samples or quality standard) are inapplicable and rejected by SELLER. BUYER shall be deemed to have so assented unless BUYER notified SELLER to the contrary in writing within ten (10) days of receipt of this document. If for whatever reason BUYER should fail to accept these terms in writing, any conduct by BUYER which recognizes the existence of a contract pertaining to the subject matter hereof, including but not limited to, payment and/or acceptance of product, shall constitute an acceptance by BUYER of this document and all of its Terms and Conditions of Sale.

#### 3. LIMITED WARRANTIES:

(a) SELLER warrants only that the goods conform to SELLER'S applicable specifications, or if appropriate other specifications accepted by SELLER in writing.

**(b) THIS LIMITED WARRANTY IS EXTENDED TO BUYER ONLY AND IS NOT TRANSFERABLE TO SUBSEQUENT PURCHASES OR USERS OF PRODUCTS. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED TO THE FULL EXTENT SUCH MAY BE DISCLAIMED BY LAW, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, NON-INFRINGEMENT OR OTHERWISE.** The remedies to BUYER shall be limited to those provided herein. No agreement varying or extending the foregoing warranty, remedies or this limitation will be binding upon SELLER unless in writing, signed by a duly authorized officer of SELLER.

(c) The Limited Warranty does not extend to any goods sold and/or manufactured by Seller which have been subjected to misuse, neglect, improper storage, accident, improper

transport, improper testing and/or alteration of any kind. This Limited Warranty shall not be expanded and no obligation or liability will arise, due to technical advice or assistance, qualification or testing data or services SELLER may provide in connection with BUYER'S purchase.

**(d) IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO BUYER, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY IN TORT, VOLUNTARY OR INVOLUNTARY RECALL OR OTHERWISE, EXCEED THE PRICE OF THE PARTICULAR PRODUCTS SOLD HEREUNDER WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, RECALL, OR PUNITIVE DAMAGES.**

#### **4. PROPERTY AND OWNERSHIP RIGHTS:**

Unless otherwise agreed in writing, the design, development or manufacture by, of goods or service for BUYER shall not be deemed to create a "work made for hire" and shall not give BUYER any patent, copyright or any other intellectual property right interest in the goods or services, or any portion thereof. All such rights shall remain the property of SELLER. Unless otherwise agreed in writing, all tooling, recipes, know-how, processing, samples, date and propriety information of SELLER, whether or not made for BUYER shall belong solely and exclusively to SELLER.

#### **5. PURCHASE MONEY SECURITY INTEREST/BUYER'S SOLVENCY:**

Buyer represents and warrants to Seller it is not insolvent, as the term is defined in the Uniform Commercial Code (U.C.C.). Buyer hereby grants to Seller a purchase money security interest in the Goods identified on the face hereof.

#### **6. FORCE MAJEURE:**

Seller shall not be liable for any delay of or failure to perform its obligations hereunder for any cause beyond its reasonable control, which affects Seller or any other person (whether known or unknown to Buyer) involved in the sale, manufacturing, supply, shipment or delivery of the Goods. Shipment or delivery dates shall be extended for a period equal to the time lost by reason of any such cause; provided, however, that if such delay exceeds ninety (90) days, either party shall have the right to cancel this Contract with respect to such shipment or delivery by written notice to the other party without any liabilities to the other party. FORCE MAJEURE shall not excuse any payment due by Buyer, EXCEPT as otherwise provided herein, U.C.C. Section 2-615 shall govern the rights of both parties hereto in the event of such delay or non-performance.

## **7. RETURN POLICY:**

At Franklin Farms East, we believe that good service leads to great relationships. We have been serving our customers for over 35 years, so if you are by any means unhappy with your purchase, please contact us.

Our CUSTOMER SERVICE TEAM is available from 9:30 AM - 1:30 PM (EST), Monday-Friday. If you would like to speak to them directly via email at [CUSTOMERSERVICE@FRANKLINFARMSEAST.COM](mailto:CUSTOMERSERVICE@FRANKLINFARMSEAST.COM).

All deliveries must be inspected by the Customer and the driver at the time of delivery. It is our preference that inventory is not rejected/returned back to the carrier without approval from Customer Service.

Damaged and short-dated product must be reported within 24 hours upon receipt of order. Shortages, discrepancies, or problems with your order must also be brought to our attention by contacting your sales representative via phone or email.

If a mis-shipment should occur (our company has shipped incorrect material) to your company, we will replace and collect the incorrect item with the correct item at our company's expense.

For claims to be processed, damages, and shortages need to be clearly marked on the bill of lading (BOL) with the Driver's signature and photographs of damages need to be provided. Determination as to whether a product is faulty or not will be at the sole discretion of Franklin Farms East, Inc. when a product is determined to be faulty, we will refund your original delivery charges and you will not be charged for any extra transit costs incurred.

Franklin Farms East, Inc. reserves the right to deny credit claims for any product that is discarded without written permission from Franklin Farms, East, Inc.

Franklin Farms East, Inc. reserves the right to charge a restocking fee dependent upon the reason, condition, and age of the returned material.

Franklin Farms East, Inc. reserves the right to refuse returns from any account that has excessive returns. Franklin Farms East, Inc. reserves the right to charge for returned materials that were damaged in transit.

**THANK YOU FOR BEING OUR VALUED CUSTOMER. WE ARE GRATEFUL FOR THE PLEASURE OF SERVING YOU AND MEETING YOUR NEEDS.**

## **8. TAXES:**

Buyer shall pay all taxes, excises, fees or charges with respect to the sale or transportation of Goods.

## **9. ENTIRE AGREEMENT:**

Acceptance of Buyer's purchase order is expressly conditioned upon Buyer's acceptance of the terms and conditions herein and the exclusion of any conflicting terms that may be contained in Buyer's purchase order. Any conflicting terms in Buyer's Purchase Order are hereby rejected. Any objections to any terms herein must be in writing and shall specifically state which provision(s) of these terms is objected to and shall not be deemed timely unless received by Seller within seven (7) days of the date of this Contract. This Contract, including the face hereof, is intended by the parties as the final, complete, and exclusive expression of their agreement relating to the subject matter hereof and supercedes any prior agreement or understanding between them. No parol evidence, course of dealing, conduct, performance or usage of the trade shall be relevant to supplement or explain it. No waiver, amendment or modification of any provisions hereof shall be effective unless made in writing and signed by both parties. Failure by either party to exercise or enforce any right conferred by this contract shall not be deemed a waiver or any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.

## **10. GOVERNING LAW:**

This Agreement shall be governed and construed in accordance with the law of the Commonwealth of Pennsylvania without regard to its choice-of-law provisions. the United Nations Convention on contracts for the International Sale of Goods shall not apply to any purchases made hereunder. Seller and Buyer Agree that any controversy or claim arising out of or relating to this Contract, or the breach hereof shall be litigated in the Pennsylvania State Court of Common Pleas, Northampton County.