



## GENERAL TERMS AND CONDITIONS OF SALE

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These General Terms and Conditions of Sale (these “Terms”) apply to any sale of meat (including beef, pork, poultry, and seafood) or other products by Legendary Meats, LLC, a Georgia limited liability company with the principal office address of 1058 King Industrial Drive Marietta, Georgia 30062 (“Seller”). The customer who purchases meat or other products from Seller (“Customer”), accepts and agrees to abide by these Terms. These Terms may refer to the Customer or the Seller as a “Party,” or collectively as the “Parties.”

### 1. Applicability

- 1.1 These Terms govern all sales of meat and other products (the “Goods”) by Seller. In addition to these Terms, the Seller may issue (a) a credit application with its own terms and conditions (“Credit Application”), and (b) other document(s) identifying the Customer, the Goods ordered, or other specific terms of the transaction (“Order Documents”). The Order Documents may include the Seller’s routing form, order confirmation, or invoice. In the event of conflict between these Terms and the Credit Application or Order Documents, these Terms shall prevail.
- 1.2 These Terms, the Credit Application, and the Order Documents (collectively, this “Agreement”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms.

### 2. Delivery of Goods

- 2.1 The Goods will be delivered within a reasonable time after the receipt of Customer’s purchase order and the issuance of Seller’s Order Documents. Seller reserves the option to assign specific delivery days and/or maintain open delivery windows to Customer’s locations. Seller will not be liable for any delays, loss or damage in transit.
- 2.2 Unless otherwise agreed in writing by the Parties, Customer will take possession and title to the Goods upon delivery to the Customer’s premises (“Delivery Point”) and upon Seller’s acceptance of an authorized signature of Customer or Customer’s agent. Title and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point. If Seller does not accept the authorized signature for any reason, possession and title to the Goods will remain with the Seller.
- 2.3 Seller may, in its sole discretion, without liability or penalty, make partial deliveries of Goods to Customer. In the event of a partial delivery, Customer will pay for all Goods delivered, whether such delivery is in whole or partial fulfillment of Customer’s purchase order.

### 3. Order Cancellation/Termination

- 3.1 If, for any reason, Customer fails to accept delivery of any of the Goods within thirty (30) minutes of the Goods being delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point at such time because Customer has not provided the appropriate address, instructions, documents, licenses or authorizations, then the Customer’s purchase order will be cancelled. Without waiving the foregoing, at Seller’s sole discretion, Seller may attempt to deliver the Goods at another time or place without cancelling the order.
- 3.2 Seller may cancel the order or terminate this Agreement at any time and for any reason upon written notice to Customer.

### 4. Inspection and Rejection of Nonconforming Goods

- 4.1 Customer shall inspect the Goods immediately upon delivery, while the Seller’s driver is still present at the Delivery Point (“Inspection Period”). Customer will be deemed to have accepted the Goods unless it notifies Seller of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. Customer’s signature on Seller’s invoice shall be deemed conclusive evidence that the Goods are conforming and have been accepted by

Customer. “Nonconforming Goods” means Goods that, at the time of delivery, are different than those identified in Customer’s purchase order.

- 4.2 If Customer timely notifies Seller of any Nonconforming Goods, Seller will, in its sole discretion, (a) replace such Nonconforming Goods with conforming Goods, or (b) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. If Seller exercises its option to replace Nonconforming Goods, Seller will deliver to Customer the replaced Goods to the Delivery Point.
- 4.3 Customer acknowledges and agrees that the remedies set forth in Section 4.2 are Customer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 4.2, all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Seller. Seller may, in its sole discretion, agree to accept returns of Goods for reasons other than Seller’s fault, but any such returns shall be subject to a restocking fee.

## **5. Non-delivery**

- 5.1 Seller will not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Customer gives written notice to Seller of the non-delivery within 10 days of the date when the Goods would in the ordinary course of events have been received.
- 5.2 Any liability of Seller for non-delivery of the Goods will be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

**6. Customer’s Acts or Omissions.** If Seller’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, contractors, consultants or employees (including providing incorrect information concerning delivery), Seller will not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## **7. Price**

- 7.1 Customer will purchase the Goods from Seller at the price agreed to by the Parties and set forth in the Seller’s Order Documents or invoice (the “Price”). Any Goods sold in units less than manufacturer’s standard containers will be subject to a surcharge determined at Seller’s discretion.
- 7.2 All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. Customer will be responsible for all such charges, costs, and taxes. Customer will not be responsible for any taxes imposed on Seller’s income, revenues, gross receipts, personnel, real or personal property, or other assets.

## **8. Payment Terms**

- 8.1 Customer shall pay all invoiced amounts due to Seller within the time set forth in the Seller’s invoice.
- 8.2 Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Customer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof. Customer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.
- 8.3 All purchases of Goods on credit are subject to Seller’s approval of Customer’s credit application. The Customer’s initial credit application will apply to this Agreement and any future agreements with the Seller. If more than one credit application has been submitted and approved, the most recent credit application governs.
- 8.4 In the event that at any time Customer is in default under this Agreement, Seller reserves the right to withhold delivery, to cancel and terminate any or all orders, and to hold Customer liable for any damages and expenses incurred by Seller. The Seller also reserves the right to declare all charges and accounts to be immediately due and payable.

**9. Order Changes.** In the event that Customer causes or requests changes to be made which affect delivery, Customer will reimburse Seller for any expense incurred by Seller in respect of or resulting from each such change or delay upon presentation by Seller of a simple invoice. Any additional Goods not specifically set forth in the Order Documents shall be at Customer's additional expense.

#### **10. Warranty Disclaimer**

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR REQUIRED BY LAW, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE, OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

#### **11. Limitation of Liability**

11.1 IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11.2 IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER, AS REFLECTED IN THE SELLER'S INVOICE.

**12. Indemnification.** To the fullest extent permitted by law, Customer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees, the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers) resulting from any claim of a third party or Seller arising out of or occurring in connection with (a) the Goods purchased from Seller, or (b) Customer's negligence, willful misconduct or breach of this Agreement. Customer shall not enter into any settlement without Seller's or Indemnified Party's prior written consent. This indemnification provision shall not apply to claims resulting directly from Seller's gross negligence or Seller's breach of this Agreement.

**13. Compliance with Law.** Customer will comply with all applicable laws, regulations and ordinances. Customer will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

**14. Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**15. Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Customer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

**16. Force Majeure.** The Seller will not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown, or power outage.

## 17. Miscellaneous

- 17.1 *Waiver.* This Agreement may not be modified except in a writing signed by the Seller. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 17.2 *Assignment.* Customer will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.
- 17.3 *Relationship of the Parties.* The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement may be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.
- 17.4 *No Third-Party Beneficiaries.* This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under this Agreement.
- 17.5 *Governing Law; Submission to Jurisdiction.* Georgia law applies to this Agreement without regard to any choice-of-law rules that might direct the application of the laws of any other jurisdiction. **All disputes arising out of or in connection with this Agreement will be brought in the courts of Cobb County, Georgia or the U.S. District Court for the Northern District of Georgia, and the Parties consent to the jurisdiction of such courts.**
- 17.6 *Notices.* All notices and other communications required or permitted under this Agreement must be in writing and must be sent to the Party at that Party's address set forth below or at whatever other address the Party specifies in writing. To Seller: 1058 King Industrial Drive Marietta, Georgia 30062, and to Customer, as set forth in the Order Documents. All notices shall be delivered by personal delivery, verified e-mail, or by certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.
- 17.7 *Severability.* If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 17.8 *Interpretation.* For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; and (b) the word "or" is not exclusive. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any Seller documents referenced in this Agreement shall be construed with, and as an integral part of, this Agreement to the same extent as if it was set forth verbatim herein.
- 17.9 *Survival.* Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Limitation of Liability, Indemnification, Waiver, Relationship of the Parties, No Third-Party Beneficiaries, Notices, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

17.10 *Clerical Errors*. Seller reserves the right to unilaterally correct clerical, arithmetical, or stenographic errors or omissions in quotations, order acknowledgements, invoices, or other documents.