

## **FOREMOST FARMS USA, COOPERATIVE TERMS AND CONDITIONS OF PURCHASE**

These terms and conditions of purchase (“Terms and Conditions”) apply to each purchase order (“Order”) for goods or equipment (“Goods”) and/or services (“Services”) submitted by Foremost Farms USA, Cooperative (“Foremost”) to the supplier named in the Order (“Supplier”), in addition to any and all descriptions, specifications, prices, and other items set forth in the Order itself. In these Terms and Conditions, “we”, “us”, or “our” will refer to Foremost, and “you” or “your” will refer to Supplier.

1. Additional or Different Terms. The Order is valid only for the Goods or Services described in the Order, and implies no additional purchase commitments on our part. This Order is our offer to you and does not constitute an acceptance by us of any offer to sell, quotation, or proposal. We expressly object to any and all contradictory or additional terms and conditions contained in any acknowledgment, quotation, sales confirmation, confirming quotation form, or other correspondence submitted by you pertaining to the Order.

*Sections 2 through 9 apply to the extent that the Order pertains to Goods, whether alone or in conjunction with Services.*

2. Delivery Date and Shipping. 2.1. Supplier will tender the Goods for delivery to Foremost on or before the delivery date specified in the Order (the “Delivery Date”). The Delivery Date is of the essence of the agreement between the parties. Supplier will notify Foremost promptly of any delay or threatened delay. Foremost reserves the right to cancel the Order in whole or in part if Supplier is unable to deliver the Goods on or before the designated Delivery Date.

2.2. Unless otherwise specified in the Order, Shipment will be F.O.B. the Foremost facility specified in the Order (the “Foremost Plant”). No charges will be allowed for freight, transportation, shipping, storage, handling or other similar charges without Foremost’s express written consent. Supplier will follow any instructions from us as to carrier and transportation. If delivery by Foremost truck is specified in the Order, then the Goods are not to be shipped via any other carrier without Foremost’s express written consent; if such consent is not obtained and the Goods are shipped via common carrier, Foremost will charge back any charges of the common carrier. No acceptance of any Goods after the Delivery Date will waive our rights with respect to late delivery, nor will it be deemed a waiver of future compliance with these Terms and Conditions.

2.3. A packing list and a “Certificate of Compliance” or “Certificate of Analysis,” as applicable, will be placed in each shipment. All Goods will be suitably packed and marked in accordance with any and all requirements and regulations that apply to such Goods. Our Order number, part or item number, ordering location, and the item description will be included on all packing lists, shipping cartons, invoices and any correspondence pertaining to the Order. Foremost will not pay for packing or boxing of any Goods unless expressly stated in the Order.

3. Price. The purchase price of the Goods is detailed on the Order. The price set forth on the Order will be complete, and no additional charges of any type will be added to those set forth on the Order without Foremost’s express written consent, except for (a) shipping charges if the delivery terms are F.O.B. your dock, and (b) sales or excise taxes, if any, imposed on the sale of Goods set forth on the Order. Supplier represents and warrants that the price charged for the Goods is no more than the lowest price charged by Supplier to similar buyers under conditions similar to those specified in the Order.

4. Payment Terms. Unless an alternative method of payment is specified in the Order, Supplier will invoice Foremost no earlier than when the Goods are tendered for shipment. Payment for the Goods will be due

within sixty (60) days following invoice. All claims for money due or to become due from us will be subject to deduction or setoff by us by reason of any claim arising out of this transaction with you.

5. Title and Risk of Loss. Title and risk of loss to all Goods will remain vested in Supplier until the Goods are delivered to Foremost at the F.O.B point. Supplier will bear the risk of loss or damage to any Goods rejected by Foremost and placed on transport for return to Supplier, except for loss, destruction of, or damage to any rejected Goods resulting from the negligent actions of Foremost, its officers, agents or employees. Foremost will notify Supplier prior to shipping any Goods back to Supplier so as to ensure proper receipt and handling.

6. Inspection and Acceptance. 6.1. If the Goods consist of a substantial piece of equipment, then at the request of Foremost, Supplier will permit Foremost, upon reasonable notice, to inspect that equipment at Supplier's site prior to shipment. Any such on-site inspection by Foremost will in no way relieve Supplier from any duty or obligation it has in connection with this transaction, constitute any acceptance of the equipment on the part of Foremost, nor will it constitute a waiver of any of Foremost's rights, remedies or claims under these Terms and Conditions.

6.2. All Goods furnished in connection with the Order will be subject to our inspection and approval. Payment for any Goods will not itself constitute acceptance of the Goods nor will it constitute a waiver of any of Foremost's rights, remedies or claims under these Terms and Conditions. We reserve the right, without limitation, to reject any Goods delivered in excess of the quantity ordered (except for customary quantity variations, which will in no event exceed 5%), any defective Goods, or any Goods that do not conform to the specifications set forth in the Order. Rejected goods will be held for disposition or returned to you at your expense, and, without limiting our other remedies, we may charge you all reasonable expenses of unpacking, examining, repacking and reshipping those Goods. Supplier's failure to deliver the Goods of the quality, in the quantity, and within the time specified will, at Foremost's option, relieve Foremost of any obligation to accept delivery of and pay for the Goods.

6.3. If the Goods consist of a substantial piece of equipment, then "acceptance" will mean the later of (i) Foremost verifies to its reasonable satisfaction that the equipment operates as intended, and (ii) the equipment has been inspected by, and is acceptable to, the United States Department of Agriculture ("USDA") applying dairy standards and all other governmental authorities with jurisdiction over the equipment and its installation at the Foremost Plant.

7. Representations and Warranties. Supplier represents and warrants that: 7.2. The Goods will conform to the description and any specifications set forth in the Order. If applicable, the Goods will also conform to any sample upon which the Order is based.

7.3. The Goods will be merchantable, of good material and workmanship, and, to the extent that Foremost has relied on the Supplier to select the Goods for a particular purpose, will be fit for the purpose intended.

7.4. The Goods will be free from defects, including any hidden defects that appear in storage or use but were not evident during normal inspection.

7.5. Supplier has and will convey good and marketable title to the Goods.

7.6. All food products, including food articles, food ingredients and food packaging, or any part thereof, will: (i) be in full compliance with all applicable federal, state and local laws, rules and regulations (collectively, the "Food Laws"), including without limitation the Federal Food, Drug and Cosmetic Act

("FDCA"), as amended from time to time, and the rules and regulations promulgated from time to time by the United States Department of Agriculture ("USDA") and/or the Food and Drug Administration ("FDA"); (ii) be manufactured, produced, transported, stored, shipped and delivered in accordance with all Food Laws, including without limitation the "Good Manufacturing Practices" under the FDCA or comparable regulations of the USDA and the FDA, and any applicable specifications or policies communicated by Foremost to Supplier from time to time; (iii) not be adulterated or misbranded within the meaning of the FDCA or USDA or any other Food Law; (iv) not be a food product which may not, under applicable Laws, be introduced into interstate commerce; (v) not be a food product adulterated or misbranded under any applicable Food Law; and (vi) if perishable, will be suitable for consumption during the specified shelf-life period.

7.7. The provisions of this Section will survive acceptance of the Goods by Foremost and will not be deemed waived by reason of Foremost's inspection, acceptance or payment.

7.1. All Goods will be manufactured, produced, transported, stored, and shipped by Supplier in full compliance with all applicable federal, state and local laws, rules and regulations, and Supplier will maintain any and all federal, state and local licenses, permits and registrations necessary to perform its obligations hereunder. To the extent applicable, Supplier will comply fully with (i) "Current Good Manufacturing Practices" as set forth in Title 21 of the Code of Federal Regulations Part 110, (ii) our current "Quality Procedures" (available upon request), as amended from time to time, and (iii) our current "Safety and Good Manufacturing Practices" (available upon request), as amended from time to time.

## 8. Remedies.

8.1. If the Goods fail to conform to any of the warranties, Foremost will so notify Supplier, and Supplier will promptly repair or replace such Goods at the Foremost Plant free of all charges to Foremost.

8.2. If Foremost is prohibited from using the Goods because of a third party's intellectual property rights, then in addition to its indemnification obligations set forth below, Supplier will at its expense (i) procure for Foremost the right to continue using the Goods, (ii) replace the Goods with a functionally equivalent non-infringing substitute, or (iii) modify the Goods so that they are non-infringing without incurring loss of functionality.

8.3. No remedy herein conferred upon Foremost is intended to be exclusive of any other remedy, and each and every remedy given under these Terms and Conditions will be cumulative and will be in addition to every other remedy now or hereafter existing at law or in equity.

9. Changes. Supplier may not make any changes with respect to the Goods without Foremost's advance written approval sent to both buyer and ship to address, which may be given or withheld in Foremost's sole discretion, including (a) the location at which Goods are manufactured, (b) any subcontractors to Supplier with respect to Goods, (c) the processes or procedures used by Supplier in the production of Goods, (d) the specifications, composition, fit, form, function or appearance of Goods, or (e) the chemicals, raw materials or any components or ingredients used in production of Goods. If Supplier learns of a possible change to the Goods that may reduce costs, improve quality, or otherwise be beneficial to Buyer, Supplier shall promptly notify Buyer of the possible change.

***Sections 10 through 14 apply to the extent that the Order pertains to Services, whether alone or in conjunction with Goods.***

10. Time for Performance. Performance of the Services will commence no later than, and will be completed by, the dates, if any, that are specified on the Order. Any deadlines so specified on the Order are of the essence.

11. Price. Foremost will pay the amount(s) set forth on the Order as consideration for performance of the Services. The amount(s) shown on the Order will be complete, and no additional charges of any type will be added without our express written consent, except for sales or excise taxes, if any, imposed on the sale of the Services under the Order.

12. Payment. Unless a different method of payment is specified in the Order, Supplier will issue an invoice upon full completion of the performance of the Services. Except as otherwise stated in the Order, payment for performance of the Services will be due within sixty (60) days following invoice. All claims for money due or to become due from us will be subject to deduction or setoff by us by reason of any claim arising out of this transaction with you.

13. Representations and Warranties. Supplier represents and warrants that:

13.1. The Services performed hereunder will comply with all applicable state and federal regulations, and Supplier will obtain and maintain any and all federal, state, and/or local licenses, permits and registrations necessary to perform the Services.

13.2. To the extent applicable, Supplier will comply fully with (i) "Current Good Manufacturing Practices" as set forth in Title 21 of the Code of Federal Regulations Part 110, (ii) our current "Quality Procedures" (available upon request), as amended from time to time, and (iii) our current "Safety and Good Manufacturing Practices" (available upon request), as amended from time to time.

13.3. Supplier and its employees and agents who perform the Services will have the experience, capability and resources to efficiently and competently perform the Services.

13.4. All Services performed hereunder will be performed in a professional and workmanlike manner and in accordance with the generally accepted standards, procedures and techniques in the Supplier's industry, and to Foremost's reasonable satisfaction.

13.5. Supplier will not create or permit any liens or third party security interests in connection with Supplier's performances of the Services.

14. Remedies.

14.1. Upon any notice from Foremost that Supplier has breached any of the representations or warranties contained herein, Supplier will within fifteen (15) days re-perform such Services in compliance with such representations and warranties at no additional expense to Foremost.

14.2. No remedy available to Foremost is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and will be in addition to every other remedy given under these Terms and Conditions or now or hereafter existing at law or in equity.

***Sections 15 through 29 apply to both Goods and Services.***

15. Termination. The Order may be terminated without prejudice to any other rights or remedies in accordance with the following provisions: 15.1. Either party may terminate the Order immediately at any time upon written notice if the other party breaches any of its material duties and obligations under the Order or these Terms and Conditions and fails to cure such breach to the reasonable satisfaction of the non-breaching party within fifteen (15) days after written notice of the breach is given.

15.2. Either party may terminate the Order immediately at any time upon written notice to the other party if the other party (i) commences or has commenced against it a proceeding under any bankruptcy, insolvency,

debtor's relief law or similar law; (ii) has a receiver appointed for it or for any of its property; (iii) becomes insolvent or unable to pay its debts as they mature in the ordinary course of business; or (iv) makes a general assignment for the benefit of its creditors.

15.3. If an Order pertains predominantly to Services, Foremost may terminate the Order for convenience and without cause upon five (5) days written notice to Supplier. Upon termination of the Order, Supplier will cease providing the Services, and Foremost will pay Supplier for the Services performed prior to termination.

16. Indemnification. 16.1. Supplier will indemnify, defend and hold Foremost and its affiliates and their members, directors, officers, employees, agents, successors and assigns harmless from and against any and all damages, liabilities, losses, obligations, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or caused by (a) any negligent actions or omissions of or by Supplier, its employees, subcontractors or agents under or related to the Order, and (b) any failure of Supplier or any of its employees, subcontractors or agents to observe or comply with any of Supplier's duties or obligations under the Order or these Terms and Conditions. The provisions of this Section will survive termination of the Order.

16.2. Foremost will indemnify, defend and hold Supplier and its affiliates and their owners, directors, officers, employees, agents, successors and assigns harmless from and against any and all damages, liabilities, losses, obligations, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or caused by (a) any negligent actions or omissions of or by Foremost, its employees, subcontractors or agents under or related to the Order, and (b) any failure of Foremost or any of its employees, subcontractors or agents to observe or comply with any of Foremost's duties or obligations under the Order or these Terms and Conditions. The provisions of this Section will survive termination of the Order.

16.3. Intellectual Property Indemnity. Supplier will indemnify, defend and hold Foremost and its affiliates and their members, managers, directors, officers, shareholders, employees, agents, successors and assigns harmless from and against any and all damages, liabilities, losses, obligations, judgments, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) arising out of or in connection with any claims, suits or proceedings brought against Foremost alleging that any Goods or Services provided by Supplier constitutes a misappropriation or infringement of any patent, copyright, trademark, trade secret, or other proprietary right of any third party; provided however, that this obligation will not apply to the extent that any alleged misappropriation or infringement of those rights is based on Foremost's specifications.

17. Independent Contractor. Supplier's relationship to Foremost in connection with the manufacture and sale of the Goods and the performance of the Services is that of an independent contractor, and not of an employee or agent of Foremost. Supplier acknowledges that Foremost has no responsibility to Supplier for federal or state withholding taxes, social security taxes, worker's compensation, unemployment taxes or any other similar coverages or taxes regarding Supplier or its employees. The performance of Supplier's obligations hereunder does not make or appoint Supplier as an agent of Foremost, nor does it create a partnership or joint venture between the parties. Supplier will not act or represent itself as an agent of Foremost, and will not purport to bind or obligate Foremost in any manner.

18. Duty to Notify. Supplier will immediately notify Foremost upon becoming aware of any spill, release or disposal of a Hazardous Substance on the worksite or any adjoining property, or in connection with any of

its obligations hereunder. For purposes of these Terms and Conditions, “Hazardous Substance” will mean any hazardous or toxic substance, material, or waste that is or becomes regulated by any governmental authority, including, without limitation, any substance, material, or waste that is (i) listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. § 172.01 and appendix thereto), (ii) identified by the United States Environmental Protection Agency as a hazardous substance under 40 C.F.R. Part 302, (iii) designated as a “hazardous substance” under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1317, (iv) defined as a “hazardous waste” under Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, (v) defined as a “hazardous substance” under Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, *et seq.*, (vi) meets the definition of hazardous substance under § 292.01 (5) Wis. Stats., (vii) an asbestos containing material, (viii) any petroleum product or material in any way derived from or containing any petroleum product, or (ix) defined as a “hazardous waste,” a “hazardous material,” a “hazardous substance,” a “contaminant,” or a “waste” under any other laws or regulations applicable to the property in question (all as (i) through (ix) above may, from time to time, be amended, revised, supplemented, replaced, or interpreted by rule or regulation).

19. Confidential Information. All information and material that may be disclosed by one party to the other in the course of the performance of the obligations hereunder is considered confidential and proprietary and will not be used by the receiving party other than as necessary in the performance of its obligations hereunder. The receiving party will protect such information from disclosure to third parties and hold it as confidential using the same degree of care as the receiving party uses to protect its own confidential or proprietary material of like importance, but in no event less than a reasonable degree of care. Each party agrees that it will be responsible for providing that each person who accesses the disclosing party’s confidential information on the receiving party’s behalf complies with the confidentiality obligations contained herein. These obligations will continue for a period of two (2) years following any termination of the Order for any reason; provided, however, that with respect to any confidential information that constitutes a trade secret, these obligations will continue for so long as such information remains a trade secret. The obligations under this Section will not cover any information that has been or is developed independently by the receiving party without violations of obligations of confidentiality, any information that falls into the public domain without fault of the receiving party, or any information that is rightly in the possession of the receiving party at the time of disclosure by the disclosing party. Notwithstanding the foregoing restrictions, the receiving party may disclose any information to the extent required by an order of any court or governmental authority, but only after the disclosing party has been so notified and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

— 20. Insurance. At all times during the performance of the obligations hereunder, Supplier will maintain standard insurance policies as follows: (i) Worker’s Compensation and Employer’s Liability Insurance (including occupational disease) in accordance with applicable statutory requirements in effect where the services are to be performed. Employer’s Liability Insurance will have the following minimum coverage limits: One Million US Dollars (\$1,000,000) per occurrence for Bodily Injury by accident, One Million US Dollars (\$1,000,000) per employee for Bodily Injury by disease, and One Million US Dollars (\$1,000,000) policy limit for Bodily Injury by disease. The requirements hereunder will apply to Supplier and any subcontractor of Supplier of any tier (if applicable); (ii) Commercial General Liability Insurance with the following minimum coverage limits: aggregate limit of Two Million US Dollars (\$2,000,000) and a limit of One Million US Dollars (\$1,000,000) per occurrence, including One Million US Dollars (\$1,000,000) personal and advertising injury;

- (iii) Should performance of the Order involve the use of automobiles, business Auto Insurance (including owned, non-owned, hired, operated or used) in a combined single limit of One Million US Dollars (\$1,000,000) per occurrence for bodily injury and property damage liability;
- (iv) Umbrella Coverage with an aggregate limit of at least Five Million US Dollars (\$5,000,000) and a limit of One Million US Dollars (\$1,000,000) per occurrence;
- (v) Should performance of the Order involve professional services or design work, Errors and Omission Insurance with an aggregate limit of Five Million US Dollars (\$5,000,000) covering Supplier against any and all sums which Supplier may become obligated to pay on account of any professional liability arising out of or in connection with performance of the obligations hereunder.
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Supplier will name Foremost as an additional insured under such policies and will provide Foremost with a certificate evidencing the above insurance coverage. Supplier will require the same limits, coverages, and conditions from any subcontractor used to by Supplier to do work under the Order, unless otherwise agreed in writing by Foremost. Supplier will provide Foremost with written notice of any proposed cancellation, termination, non-renewal or other material change to such insurance coverage, in accordance with the respective policy provisions. Foremost may request proof of insurance at any time. The failure of Foremost to review or require evidence of insurance will not be construed as a waiver of Supplier's obligation to maintain the insurance. The terms of this Section will not be deemed to limit in any way the liability of Supplier hereunder or to limit any rights Foremost may have including, without limitation, rights of indemnity or contribution.

21. Federal Contractor Responsibilities. Foremost must comply with certain legal provisions because it has contracts with the U.S. government. To the extent applicable and if Supplier is not exempt, Supplier will abide by federal laws, regulations, ordinances, permits and orders pertaining to federal contractors and subcontractors, including environmental, health, safety, child welfare, nondiscrimination, wage & hour and other workplace laws and regulations. Unless this agreement is exempted by regulations of the Secretary of Labor, the Equal Employment Opportunity Clause required under Executive Order 11246 regarding nondiscrimination and affirmative action on the basis of race/ethnicity and gender, the affirmative action commitment for disabled veterans and other protected veterans, set forth in 41 CFR 60-300.5, the affirmative action clause for disabled workers, set forth in 41 CFR 60-741.5, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in this contract. To the extent applicable and if Supplier is not exempt, Supplier will abide by the requirements of 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). These regulation prohibit discrimination against qualified individuals on the basis of disability (60-741.5(a)) and protected veteran status (41 CFR 60-300.5(a)), and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and qualified protected veterans. By accepting this agreement, Supplier certifies that it complies with the applicable 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 41CFR 60-1.8. If applicable, Supplier shall comply with any notice requirements under Executive Order 13496 (29 CFR part 471.2(d)).

22. Notices. Each notice, request, demand, or other communication ("Notice") by either party to the other pursuant to the Order will be in writing, and, except for routine documentation and correspondence, will be (a) personally delivered, (b) sent by an overnight commercial courier, charges prepaid, or (c) sent by facsimile or email (but such electronic communication must be either (i) acknowledged by the recipient or (ii) confirmed by sending a copy thereof to the other party by overnight commercial courier no later than

the following business day), addressed to the principal office of the receiving party (attention: President) set forth on the Order or to such other address as such party will have communicated to the other party in accordance with this Section. Any Notice will be deemed to have been given when personally delivered, on the first business day after sending when sent by facsimile or email (or when acknowledged by the recipient if sooner), or on the first business day following the date of sending by overnight commercial courier.

23. Entire Agreement. The Order and the Terms and Conditions together constitute the entire agreement between the parties concerning the subject matter of the Order and will supersede all prior agreements between the parties concerning the subject matter of the Order. In the event of a conflict between these Terms and Conditions and the Order, the Order will prevail.

24. Assignment. Supplier may not assign any of its rights or subcontract or otherwise delegate any of its duties under the Order to any third party without the prior written consent of Foremost. Foremost may, without Supplier's consent, assign the Order (a) to any subsidiary, parent or affiliate, (b) by merger with or into any other corporation, or (c) to any party obtaining all or substantially all of the assets of Foremost. Notwithstanding the foregoing, the Order will be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Any attempted assignment in violation of this Section will be void and of no effect.

25. Governing Law; Venue; and Jurisdiction. The Order and the Terms and Conditions will be governed by and construed in accordance with the internal laws of the State of Wisconsin. Each of the parties hereto (a) submits to the jurisdiction of any state court of the State of Wisconsin or federal court sitting in the State of Wisconsin with respect to any legal action or proceeding arising out of or relating to the Order; (b) agrees that any claims with respect to such action or proceeding will be heard or determined only in any such court; (c) agrees not to bring any action or proceeding arising out of or relating to the Order in any other court unless or until such court has finally refused to exercise jurisdiction; and (d) waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

26. Severability. If any provision of these Terms and Conditions will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. The obligations herein are severable and should be construed independently of each other.

27. Waiver. The failure or delay of either party to insist upon the other party's strict performance of the provisions in the Order or these Terms and Conditions or to exercise in any respect any right, power, or remedy provided for under the Order or these Terms and Conditions will not operate as a waiver or relinquishment thereof, nor will any single or partial exercise of any right, power, or remedy preclude other or further exercise thereof, or the exercise of any other right, power, or remedy. No waiver, modification or amendment to the Order or these Terms and Conditions will be valid unless agreed to by both parties.

28. Survival. All obligations prior to the termination of the Order between the parties and all provisions of these Terms and Conditions allocating responsibility or liability between Foremost and Supplier will survive termination of the Order.

29. Records. For a period of at least three (3) years from the date of shipment, Supplier will retain complete records relating to the manufacture, production, storage, shipment, transportation, and sale of Goods, or the performance of Services, related to any Order, and upon request will make these records available to Foremost or its agent.