

# STANDARD TERMS AND CONDITIONS OF SALE

ALL ORDERS ARE SUBJECT TO THE FOLLOWING STANDARD TERMS AND CONDITIONS, WHICH SUPERSEDE ANY INCONSISTENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER CUSTOMER SUPPLIED FORM.

1. Sale Conditions. As used herein, the term “Seller” shall mean **Simply Good Foods USA, Inc. and its affiliates, including Quest Nutrition, LLC**, as applicable, and the term “Buyer” shall mean the person, firm, entity or corporation purchasing goods supplied by Seller, whether pursuant to a Purchase Order (defined below), electronic data system, or otherwise (hereinafter “Products”). These terms and conditions of sale (hereinafter “Sale Conditions”) apply to and are deemed to be incorporated in all purchases and sales of the Products, and all descriptions, quotations, proposals, offers, acknowledgements, acceptances and sales are subject to and shall be governed exclusively by these Sale Conditions. Buyer’s acceptance of any offer is limited to these Sale Conditions, which shall prevail over all terms and conditions (if any) proposed by Buyer, including any terms and conditions contained on quotations, purchase orders or other documents issued from Buyer (hereinafter “Purchase Order(s)"). No such additional or inconsistent terms or conditions proposed by Buyer shall become part of the agreement between Buyer and Seller, unless expressly accepted in writing by Buyer and Seller, which writing must specifically reference these Sale Conditions and the specific provision herein that such parties are agreeing to supersede or amend. Seller hereby rejects any proposed additional or inconsistent terms that do not meet the foregoing requirements. Without limiting the foregoing, these Sale Conditions shall not be supplemented by any trade usage, course of prior dealings or acquiescence in any course of performance.

2. Price; Taxes. All prices listed and quoted by Seller are exclusive of any federal, state or municipal sales, use or other similar taxes which Seller may be required to collect or pay upon sale or delivery of the Products to Buyer, and Buyer shall be solely responsible for payment of such taxes (excluding, for the avoidance of doubt, taxes based on Seller’s income). All taxes shall be paid by Buyer, unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority; however, Seller may elect to pay any such taxes directly, in which event Buyer shall repay Seller promptly after invoicing therefor.

3. Payment Terms. Prior to credit approval, Seller’s payment terms are cash in advance. Following approval of credit terms by Seller in accordance to its internal policies, payment terms of the gross invoice amount shall be **1% 15, net 30 days** from the date of Seller’s invoice, unless otherwise noted by Seller in writing. Seller reserves the right to modify, suspend or terminate, at any time and for any reason, any credit terms previously extended to Buyer. Additionally, Seller may at any time decline to make any shipment or delivery except upon receipt of payment or upon terms and conditions satisfactory to Seller. All amounts are

stated and payments are to be made in US Dollars unless otherwise agreed in writing. If Buyer specifies a currency other than US Dollars, Seller reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the currency of Buyer's quotation and US Dollars arising between the time of quotation and acceptance of the Purchase Order. If any payment is overdue, Seller shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Buyer without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate, or if none then at the rate of twelve percent (12%) per annum compounding daily (or, if less, the greatest amount permitted by law). If, despite any default by Buyer, Seller elects to continue to make shipments of the Products, Seller's action in so doing shall not constitute Seller's waiver of any default by Buyer or in any way prejudice Seller's legal remedies for such default. Seller shall be entitled at any time to set off any sums owing by Buyer to Seller against any sums payable to Buyer, if applicable.

4. Delivery and Title. Delivery terms are FOB Seller's shipping point (origin) unless otherwise specified by Seller in writing. Buyer will supply Seller with delivery instructions promptly on notification to Buyer that the Products are ready for shipment. If delivery instructions are not received or if Buyer requests that a shipment be postponed for more than ten (10) days after the date Buyer is notified that the Products are ready for shipment, Seller shall, at Seller's option, be entitled to make arrangements for storage of the Products at Buyer's risk and expense, and to charge Buyer accordingly for all related costs and expenses. In such case, Seller's obligation to deliver the Products will be deemed satisfied, and Buyer will become responsible for the risk of loss of, or damage to, the Products and for paying the full purchase price. In addition, delivery of the Products to common carrier or licensed trucker shall constitute delivery to Buyer, and all risk of loss or damage in transit shall be borne by Buyer. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

5. Security Interest; Insurance. Until payment in full by Buyer, Products shall be held by Buyer as bailee for Seller and will be kept readily identifiable as Seller's property. Buyer agrees that Seller shall retain a purchase money security interest in all Products sold to Buyer (the "Collateral"), and to any proceeds from the disposition of such Collateral until the purchase price due Seller shall have been paid in full. Upon any default by Buyer hereunder, Seller shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative. Prior to full payment of the purchase price, Buyer shall keep insured the Products shipped by Seller to Buyer under adequate insurance policies with such provisions, for such amounts and with such insurers as shall be satisfactory to Seller, but in no case in an amount less than the purchase price of such Products.

6. Acceptance. Buyer will be responsible for the prompt unpackaging, unloading and inspection of all Products upon arrival. All Products sold by Seller hereunder shall be deemed irrevocably accepted by Buyer, unless within ten (10) days from the shipment date, Buyer notifies Seller in writing that such Products are damaged, defective or shipped in error. Damaged Products and packaging must be kept for inspection by Seller and/or the carrier. Any claims for shortages must be made to Seller in writing within ten (10) days from receipt of the Products at issue, and noted on the bill of lading at the time of delivery.

7. Returns. All returns must be authorized by Seller. A return authorization number issued by Seller must accompany all returned Products.

8. Warranty; Disclaimer. Seller hereby warrants that, upon shipment, the Products shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act. NOTWITHSTANDING THE FOREGOING, No other warranties whatsoever are offered for the Products under THESE SALE CONDITIONS. Therefore, SELLER hereby expressly disclaims and BUYER expressly waives: (i) any statutory or implied warranty of merchantability or fitness for any purpose, (ii) any implied warranty arising from course of dealing, course of performance or trade usage, and (iii) any other WARRANTY, right, claim, or remedy whatsoever of BUYER or any other person, customer, or purchaser claiming by, through, or under BUYER against SELLER arising pursuant to SELLER's Standard Warranty or THESE SALE CONDITIONS OR any agreement pertaining to the Products, or arising pursuant to indemnity, tort (including, but not limited to, negligence), products liability or strict liability, or otherwise. No agreement varying or extending SELLER's Standard Warranty or the remedies, exclusions, or limitations set out in SELLER's Standard Warranty shall be effective unless signed by an authorized executive officer of SELLER.

9. Intellectual Property. Ownership of all intellectual property rights in the Products shall be and remain owned by and vest exclusively with Seller or its licensors. Buyer shall not reverse engineer, disassemble, or otherwise attempt to rebuild or recreate the Products. Seller's trademarks and names shall not be used otherwise than in reference to, and as applied by Seller to the Products. Further, if Seller objects to any use of its marks or names, upon notice to Buyer of the objection, Buyer shall cease and desist from such use. Any and all use of Seller's marks or names by Buyer shall inure to the exclusive benefit of Seller.

10. Default and Cancellation. In the event of Buyer's default in payment for the Products purchased hereunder, Buyer shall be responsible for all reasonable costs and expenses incurred by Seller in collection of any sums owing by Buyer, including reasonable attorneys' fees, and Seller shall not be obligated to make any further deliveries to Buyer. Should Buyer elect to

cancel an order, in whole or in part, Buyer shall be liable to Seller for reasonable cancellation charges which shall include but not be limited to all costs and expenses incurred by Seller in connection with procuring and filling Buyer's Purchase Order. Cancellations will not be accepted after shipment of any Products to Buyer.

11. Limitations on Liability. REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE), IN NO EVENT (i) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC PRODUCTS COMPLAINED OF, WHICH IN NO EVENT SHALL EXCEED THE TOTAL AMOUNT PAID FOR SUCH PRODUCTS, OR (ii) SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS OR REVENUES, DAMAGE OR DESTRUCTION OF PROPERTY).

12. Compliance with Laws. Buyer represents and warrants that it shall (i) comply fully with all applicable laws, ordinances and regulations relating to its purchase and sale of the Products, including those related to product labeling and packaging, occupational safety, and health and protection of the environment, (ii) neither take nor refrain from taking any action that could result in liability for either party or their respective affiliates under any applicable laws, ordinances or regulations, including, without limitation, any Anti-Corruption Laws, and (iii) promptly notify Seller of any mandatory, applicable law, ordinance or regulation that conflicts with the provisions of these Sale Conditions, any agreement between the parties or Buyer's practices. "Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention, the UK Bribery Act 2010, any other applicable anti-bribery law or treaty, those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control and the U.S. Commerce Department's Bureau of Industry and Security relating to trade sanctions and export controls (including, without limitation, 31 C.F.R. Chapter V and 15 C.F.R. Parts 730 et seq.), Section 999 of the U.S. Internal Revenue Code and implementing rules and regulations of any of the foregoing.

13. Confidentiality. Each party acknowledges and agrees that each may be disclosing to the other confidential or proprietary materials and other confidential or proprietary information that may be properly marked or identified as confidential or proprietary ("Confidential Information") which, if improperly used or disclosed by the receiving party, could cause irreparable harm to the disclosing party. Each party agrees to maintain the other party's Confidential Information as confidential, and not to directly or indirectly disclose or reveal it to any third party, or use it for any purpose, except for purposes of these Sale Conditions or as required by a court or governmental authority of competent jurisdiction, after first notifying the disclosing party of such disclosure requirement.

14. Compliance with Seller Policies. The Buyer shall comply with any policies governing the purchase and sale of Products as provided and updated by the Seller from time to time.

15. Force Majeure. Seller shall be excused for any delay in performance due to acts of God, acts of war, fires, floods, accidents, mill conditions, labor disputes, delays in transportation, epidemic, pandemic, quarantine, delayed issuance of export control licenses, or any circumstance or cause beyond the control of Seller in the reasonable conduct of its business. In the event of such delay, the date of shipment shall, at the option of Seller, be deferred for a period equal to the time lost by reason of the delay or otherwise for a reasonable time.

16. Governing Law and Venue. These Sale Conditions and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the internal laws of the State of Colorado and the United States of America, without regard to choice of law principles. The United States District Court for the District of Colorado and the state courts sitting in Denver, Colorado shall be sole venues for any dispute arising directly or indirectly from the relationship created or the transactions contemplated by these Sale Conditions. Each of the parties consent to the jurisdiction and venue of such courts, and waives any argument that any such courts do not have jurisdiction over such party or such dispute or that venue in any such forum is not appropriate or convenient. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to these Sale Conditions.

17. Modification and Waiver. These Sale Conditions may be modified by Seller in its sole discretion at any time. However, before any modified terms go into effect, Seller shall provide 30 days' notice to Customer of such modified terms. Any acceptance, use or sale of the products by Customer (unless Customer objects to any modified terms in writing to Seller) after such 30-day notice period constitutes Customer's acceptance of such modified terms and conditions. Seller's failure to object to provisions contained in any communications from Buyer shall not be deemed a waiver of the provisions of these Sale Conditions.

18. Severability. If any provision of these Sale Conditions shall be deemed invalid or unenforceable, these Sale Conditions shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.

19. Notices. All notices, consents, demands, and other communications with respect hereto shall be in writing and sent by first class mail, express mail, or courier, postage prepaid, to Simply Good Foods USA, Inc., 1225 17<sup>th</sup> Street, Suite 1000, Denver, Colorado 80202, Attention: General Counsel, and if to Buyer, as indicated on the face of the Purchase Order or electronic data transmission.

20. Entire Agreement. These Sale Conditions constitute the entire agreement between Seller and Buyer relating to the purchase and sale of the Products. Buyer represents that the person placing the Purchase Order on Buyer's behalf has the full authority to do so.

21. Successors and Assigns. These Sale Conditions and the rights of Buyer hereunder shall not be assigned by Buyer without Seller's prior written consent, which shall not be unreasonably withheld or delayed. Seller may assign these Sale Conditions and the rights of Seller hereunder upon written notice to Buyer. These Sale Conditions will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.