



## **STANDARD TERMS AND CONDITIONS**

**1. ACCEPTANCE AND CONTROLLING TERMS:** By placing a purchase order (in any form) with Atlantic Fish & Distributing, Co., dba Atlantic Food Distributors or Atlantic Foods ("Seller"), or by accepting the delivery of goods from Seller, Customer and guarantor, if any, (hereinafter sometimes collectively and individually referred to as "you" and "your") accept all terms and conditions contained in these Standard Terms and Conditions, without modification, in connection with the sale of goods to you by Seller. All terms and conditions set forth in any purchase order, block order, confirming or other document, issued by you which differ in any respect from the terms and conditions stated below are unacceptable to Seller (herein also sometimes referred to as "we", "us" and/or "our"), are expressly rejected by Seller, and are not part of our agreement with you. The terms and conditions herein stated shall supersede all provisions of law to the contrary. The parties agree that, until modified by mutual agreement of the parties, these Terms and Conditions shall be blanket provisions which apply to all future sales of Goods by us to you, to all third parties to whom you may sell the Goods, and to all subsequent purchases or consumers of the Goods. The term "Goods" means all products sold and/or delivered by us to you or produced by, or purchased by, us to fulfill future obligations under any block order. All Goods ordered, purchased, or produced by us in order to fulfill obligations under any block order will be deemed to be purchased by you at the time ordered, produced, or purchased by us. We retain exclusive title to all Goods until you pay for such Goods in full. Except as stated in the any legally binding and effective written document that we have, or may in the future, enter into with you, we retain the right to cancel any agreement with you at any time, without cause, and without further obligation or liability to you. In the event that we terminate our agreement with you, all of your obligations, all of our remedies for your breach of contract, and all consensual liens and associated rights herein created, shall survive such termination. None of our agents, employees, or representatives is authorized to change the terms herein provided or to bind us to any affirmation, representation or warranty concerning the sale of the Goods, and same are not enforceable against us. Unless we specifically state otherwise, all prices are payable in U.S. Dollars. Risk of loss will pass to you at the point of delivery.

**2. TERMS OF PAYMENT:** All orders are subject to ongoing credit approval. Credit approval is subject only to our sole discretion. Payment of all invoices is due upon receipt unless otherwise stated in writing. You agree to provide all credit information requested by us and you, personally, represent and warrant that all such information you provide is true, complete, and not misleading. All past due amounts shall bear interest at the rate of eighteen percent (18%) per annum from the date of delivery of the Goods, or the maximum interest rate allowed by law, whichever is lower. All amounts due hereunder shall be due and payable at the time the Goods are delivered, or at our main office, unless otherwise set forth in another legally binding and effective written agreement between us and you. Unless agreed by us in writing, you are not entitled to discounts for cash or otherwise, nor are you entitled to any manufacturer rebates or incentives.

**3. TAXES:** All prices are exclusive of city, state and federal taxes including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and other similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by you. You must pay state and local taxes where applicable. Any such taxes which we may pay with respect to the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Goods shall be deemed to have been paid for your account; and you shall pay the amount thereof to us upon demand. If you fail to pay such amounts upon demand, the outstanding balance shall bear interest at the rate of 18% per annum from the date such amounts are paid by us.

**4. DELIVERY:** Unless otherwise specified, the time of shipment is approximate and is not guaranteed by us. We make no representation or guarantee that the delivery date(s) will be satisfied. We are not responsible for any delay in performance of any of our obligations, including but not limited to delivery within the specified delivery date(s). You have the sole responsibility to assure that the Goods are properly inspected within three (3) hours after delivery (the "Inspection Period") and to reject all non-conforming Goods within the Inspection Period. All sales of Goods which are not rejected within the Inspection Period shall be final.

**5. LIMITATION OF REMEDIES AND LIABILITIES:** WE SHALL NOT BE LIABLE FOR ANY DELAYS OR LOSSES CAUSED BY OUR ERROR OR FOR CAUSES BEYOND OUR CONTROL, SUCH AS ACTS OF NATURE, TRUCKING ACCIDENTS, ACCIDENTS TO MACHINERY, PERSONAL INJURY OR DEATH, FIRE, FLOODS, STRIKE, PANDEMIC OR OTHER NATIONAL, STATE OR LOCAL HEALTH EMERGENCIES, GOVERNMENTAL SHUTDOWN, WORK STOPPAGE, TERRORIST ACTS, RIOTS, WAR, GOVERNMENTAL LAWS, RULES, REGULATIONS, SUSPENSIONS, OR THE INABILITY TO OBTAIN FUEL, MATERIALS, OR PARTS. OUR OBLIGATIONS AND LIABILITIES UNDER ANY AGREEMENT WITH YOU AND IN CONNECTION WITH THE GOODS ARE EXPRESSLY LIMITED TO REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE GOODS, AS WE SHALL DETERMINE IN OUR SOLE AND ABSOLUTE DISCRETION. YOU AGREE THAT IN NO EVENT SHALL WE BE LIABLE FOR LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF A BREACH OF THE DISTRIBUTION AGREEMENT OR IN CONNECTION WITH ANY DEFECT IN THE GOODS, EVEN IF WE ARE ADVISED, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. ALL DAMAGES IMPOSED UPON US BY LAW SHALL NOT, IN ANY EVENT, EXCEED THE AMOUNT THAT YOU ARE CHARGED FOR THE GOODS. THE REMEDIES SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REMEDIES. FAILURE TO NOTIFY US OF NON-CONFORMING GOODS WITHIN THE INSPECTION PERIOD WILL RESULT IN A WAIVER OF YOUR RIGHTS.

**6. INDEMNIFICATION:** You hereby agree on behalf of yourself and your successors and assigns, to defend, indemnify, and hold us and our affiliates, and their shareholders, members, officers, directors, managers, employees and agents, and the heirs and assigns of the foregoing (collectively the "Indemnified Parties") harmless against any and all losses, claims, damages, judgments, liabilities or expenses, including, without limitation, reasonable attorney's fees and expenses incurred by us as a result of or arising out of (1) your breach of any agreement with us; (2) your or your agent's acts or omissions in the handling, storage or transportation of the Goods; (3) any claim by a third party against the Indemnified Parties for any errors, omissions, defects (including, without limitation, product liability claims), or any and all claims regarding the Goods; (4) any liability or claim arising out of an alleged infringement of a U.S. and/or foreign trademark, trade name, or patent resulting from your use, advertisement, or sale of the Goods (5) any claims relating to packaging or product labeling, including without limitation false or misleading labeling.

**7. CONSENSUAL LIEN:** As security for all amounts which you owe to us at any time, you, on behalf of yourself and your successors and assigns, hereby irrevocably grant and convey to us, and our successors and assigns, a lien on all of the following: i) Goods in your possession or control which we have at any time sold to you, whether or not the amounts owing and hereby secured represent the purchase price for the Goods to which this lien attaches; ii) all cash, equipment, inventory (whether or not purchased from us), bank deposits, accounts, accounts receivable, intellectual property, general intangibles (including goodwill), all amounts which any third party may owe to you, and proceeds of all of the foregoing. You hereby consent to our filing a UCC Financing Statement, and to all other legal actions, in order to perfect the security interests herein granted. You hereby grant to us, an irrevocable license, coupled with an interest, to enter upon your premises at any time, during or after business hours, to repossess all Goods and other inventory (whether or not purchased from us) which are subject to this security interest, without legal action or due process. You hereby agree to make the Goods freely available to us in order that we may exercise our rights hereunder. You shall cooperate with us in order to allow said repossession. Upon exercise of our rights under this paragraph to repossess the Goods, if the Goods are salvageable and saleable, we, in our sole and absolute discretion, may: i) elect to credit your unpaid account for the fair market value of the Goods at the time of repossession, as if sold in a distressed sale outside the ordinary course of business, without actually selling said Goods; or ii) we may sell the repossessed Goods in any manner which we deem appropriate for any amount which are acceptable to us under the circumstances, and such amounts shall be credited against your account. You hereby waive any objection, cause of action, lawsuit, and/or damages arising in connection with our repossession of the Goods, sale of the Goods, or exercise of the rights created by these Terms and Conditions.

**8. DEFAULT:** In the event that you fail to pay when due an amount invoiced to you, fail to pay when due any other amount due under any agreement with us, or otherwise breach any obligation or covenant contained in any agreement with us, we may, in our sole and absolute discretion, in addition to other remedies to which we may be entitled, without affecting the election of remedies, without cancelling our agreement with you, suspend our performance until you pay all outstanding obligations to us, in full. If within fourteen (14) days after expiration or termination of our agreement with you, you fail to pick up and pay for Goods held by us as inventory, we have the right to dispose of such Goods (including the sale or destruction of the Goods as we deem appropriate in our sole and absolute discretion) without notice or liability to you, and without relieving you of your payment obligations to us. In addition, upon the happening of one or more of the following events, we shall have the unrestricted right to suspend performance without cancelling our agreement with you and/or pursue any further remedies available at law or in equity: (1) your insolvency or inability to meet obligations as they come due; (2) the appointment of a trustee or receiver on your part, or any substantial part of your assets by any court; (3) the filing of a voluntary or involuntary petition of bankruptcy under any provision of the Federal Bankruptcy Code or any state insolvency law; (4) if you fail, or appear to be unable, to perform any of your obligations in accordance with the terms and conditions of any agreement between you and us; or (5) the sale of your business, stock, or assets to a third party. No waiver by us of your breach of any agreement with us shall constitute a waiver of any other breach out of such provision. You agree to pay all collection costs, including reasonable attorney's fees incurred by us in connection with the collection of past due amounts owed to us by you. At any time when you are in default under the terms of an agreement with us, we may, without waiving any other remedies we may have, withhold shipments, recall Goods in transit, or take possession of Goods we have delivered to you, all without the necessity of commencement of legal proceedings. In the event that we should hold shipment or take possession of such Goods, you shall be entitled to credit therefore only if such Goods are salvageable and saleable and then only upon actual liquidation of such Goods and to the extent of the proceeds from such liquidation (after first deducting any possession, shipment, administrative, and liquidation costs) exceed all amounts due to us. Nothing contained in this paragraph shall impose a duty upon us to withhold, recall or take possession of such Goods and the determination as to whether such action should be taken rests solely with us. All of our rights and remedies under this Agreement shall be cumulative and not exclusive.

**9. MISCELLANEOUS:** There are no understandings or supplemental agreements relative to the Goods which are not fully expressed in these Terms and Conditions or in any other legally binding and effective written agreement between you and us. No modifications or additions to these Terms and Conditions shall be binding on us unless specifically agreed in writing and signed by our duly authorized officer. No course of dealing or trade usage, or other contractual provision between you and any third party, except as otherwise expressly stated in these Terms and Conditions, shall be recognized to vary or modify our agreement with you. **In the event that the terms or conditions in any purchase order, acknowledgement, confirmation, or other writing issued by you differ from these Terms and Conditions or from any provision set forth in a legally binding and effective written agreement between you and us, you hereby expressly hereby waive such inconsistent or conflicting terms and conditions and hereby accept these Terms and Conditions, without modification.** Our failure to insist, in any one or more instances, upon the performance of these Terms and Conditions, or our failure to exercise any of our rights hereunder or in any other agreement with you, shall not be construed as a waiver of any such term, condition, or right. All contracts between us and you shall be deemed to be made in, and shall be governed by the laws of, the State of Ohio. The parties hereby irrevocably consent to the exclusive jurisdiction of the Court of Common Pleas of Stark County, Ohio for the adjudication of any dispute in connection with the Goods, these Terms and Conditions, or any agreement to which we and you are parties. If any provision or portion of these Terms and Conditions is deemed invalid by a court having jurisdiction over the parties, it is the intention of the parties that the remaining provisions remain fully effective. No ambiguity in these Terms and Conditions or in any written agreement shall be construed against the us based on the conclusion that we drafted the operable provision.