



GEDNEY FOODS COMPANY

Gedney Foods Company
Terms and Conditions
Purchase Orders
Rev 03/2016

1. AGREEMENTS, CHANGES, OR AMENDMENTS

This Purchase Order shall constitute the complete and exclusive agreement between Buyer and Seller to purchase, rent, or lease the goods and/or services described herein, hereinafter the "Products." The terms and conditions including any additional provisions attached to or incorporated herein by reference shall constitute the entire contract between Buyer and Seller, and all prior and contemporaneous negotiations and agreements are merged into this Purchase Order. It is expressly understood that Seller's acceptance of this Purchase Order, by execution, performance or otherwise, is made explicitly upon and subject exclusively to the terms and conditions contained herein, and as such, any additional or different terms and conditions proposed or expressed by the Seller, whether orally or in writing, are null and void, notwithstanding receipt or acknowledgement of other forms or specifications from Seller containing additional or different provisions, or conflicting oral representations by any agent or employee of Buyer. No waiver, change, or modification of any term(s) or condition(s) shall be binding on Buyer unless made in a writing generated by Buyer and signed by an authorized member of Buyer's management. Buyer expressly and specifically rejects all additional or different terms and conditions in any sales acknowledgment or other document(s) relating to the Products that Seller sends to Buyer. All handwritten changes (additions and deletions) to this Purchase Order by Seller are null and void and of no legal force or effect.

2. QUALITY, SUBSTITUTION, AND DELIVERY

Seller warrants that all Products, materials and work covered by this Purchase Order will 1) strictly conform to the drawings and samples furnished to Buyer as well as to the descriptions, specifications, and quality detailed in this Purchase Order and as otherwise represented by Seller, 2) be merchantable, new, of first grade quality and be free from defects in material and workmanship, and 3) will be fit and suitable for the purpose intended by the Buyer. Substitution of Products, material or extra charges will not be permitted unless authorized in writing by a member of Buyer's management. All Products that do not strictly conform to the drawings and samples furnished to Buyer as well as to the descriptions, specifications, and quality detailed in this Purchase Order and as otherwise represented by Seller or are not in complete conformity with the aforementioned warranty shall be deemed delivered to Buyer in error and/or in excess of quantity ordered, and are subject to return by Buyer at Seller's sole risk and expense.

3. BUYER'S RIGHT TO TERMINATE

Buyer has the right to terminate this Purchase Order in whole or in part at any time by written notice to Seller. In such event, Seller shall immediately discontinue all work and the placing of all orders for Products, materials, facilities and supplies pursuant to this Purchase Order. Seller's resulting damages, if any, shall be limited to only properly supported actual, reasonable and non-recoverable out-of-pocket costs for work already performed and accrued at termination; but in no event, however, shall such amount exceed the aggregate price specified in this Purchase Order for the Products less full credit for payments already made or to be made by Buyer, and to the fullest extent permitted by law, Buyer shall not be responsible, whether based in contract, tort (including, without limitation, negligence), or any other legal or equitable grounds, for any consequential, indirect, incidental, lost profits, special, punitive or exemplary damages to Seller under this Purchase Order, even if Buyer has been advised of the possibility of such losses or damages. Any partially completed work or raw materials whose full costs are included in the aforementioned calculation shall be identified in writing and held by Seller for disposition in accordance with the Buyer's written instructions. The foregoing notwithstanding, Buyer reserves the right to cancel all or any part of the undelivered portion of the Purchase Order for cause, without liability, in addition to Buyer's other rights and remedies, if Seller breaches any of the terms and conditions of this Purchase Order. In the event of cancellation for cause and without prejudice to any other rights or remedies, Buyer has the right to: (a) refuse to accept delivery of Products, material or performance of work; (b) return to Seller any Products or materials already accepted, recover any payments made for the same and for freight, storage, handling, and other expenses incurred, and be relieved of liability for any future payments to Seller; (c) recover any payments made to Seller for undelivered or returned Products or materials or work to be performed; and (d) purchase Products elsewhere and charge Seller with any resultant losses.

4. ASSIGNMENT

This Purchase Order may not be assigned by Seller in whole or in part without the prior written consent of the Buyer, and Seller may not delegate any part of performance of this agreement to anyone. This order and its terms and conditions are binding on the parties and their permitted successors and assigns.

5. TITLE, RISK OF LOSS, AND TITLE CLAIMS

Title and risk of loss and damage shall pass from the Seller to the Buyer only upon actual delivery and acceptance of Products by Buyer or Buyer's authorized representative at the destination designated by Buyer. Seller warrants good and marketable title of the Products sold hereunder free and clear of all encumbrances. Seller agrees to pay off and satisfy all claims made in connection with the Products sold hereunder and agrees to indemnify, defend and hold Buyer harmless from and against all such claims which Seller fails to pay off and satisfy.

6. DELAYS, TERMINATION AND FORCE MAJEURE

All deliveries shall be made in quantities and times pursuant to the delivery schedule approved in writing by Buyer. Seller agrees to notify Buyer of any matter that could delay the timely performance of this Purchase Order. If Seller fails to make the necessary progress with the performance of this order or fails to make deliveries within the time specified in this order, Buyer may terminate this Purchase Order, or such part or parts thereof as to which there has been a delay, without liability to the Seller. Buyer shall not be liable for failure to accept delivery of Products or performance of work due to causes beyond Buyer's control, including without limitation fire, flood, or other casualty, court orders, acts of governmental authorities, or strikes or other work stoppages.

7. GOVERNING LAW/VENUE AND COMPLIANCE

The validity, performance, construction, and all matters arising out of or relating to the Agreement shall be interpreted in accordance with the laws of the State of Minnesota, without regard to its conflicts of law rules. The United Nations Convention on Contracts for the International Sale of Goods or any subsequently enacted treaty or convention shall not apply or govern the Agreement or the performance thereof or any aspect of any dispute arising therefrom. Any action or proceeding between Seller and Buyer relating to the Agreement shall be commenced and maintained exclusively in the state or federal courts in Carver County, Minnesota, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. In performance of its obligations hereunder and relating to the Products, Seller shall comply fully with all application local, state, federal and international laws, ordinances, rules and regulations.

8. WARRANTIES

Supplier represents, warrants and covenants that it shall comply with all applicable international, nation, state, regional and local laws and regulations, including, without limitation, Proposition 65 (the Safe Drinking Water and Toxic Enforcement act of 1986) and other similar state statutes, the United States Foreign Corrupt Practices Act of 1977 and the Export Control Act, as may be amended from time to time, in performing its duties hereunder and in any of its dealings with respect to the Products. Supplier shall promptly notify Company in the event Supplier knows or has reason to believe that any act or refrainment from acting required by or contemplated by this Agreement violates any applicable law, rule or regulation (whether criminal or non-criminal) or if it becomes aware that any Products contain a defect which could create a product hazard or risk of serious injury or death.

Supplier acknowledges and understands that the Products may be subject to restrictions upon export from the United States and upon resale after export. Supplier therefore represents and warrants that it shall comply fully with all relevant regulations of the U.S. Department of Commerce, with the U.S. Export Administration Act, and with any other import and/or export control laws or regulations of the United States or the Territory. Supplier, upon the request of Company, shall execute and deliver to Company a letter of written assurance concerning technical data and U.S. Export Administration Regulations.



GEDNEY FOODS COMPANY

9. INSPECTION AND WAIVER

All Products covered by this Purchase Order shall be subject to final inspection and acceptance (or rejection) at the Products' final destination, notwithstanding any prior payment or inspection. Acceptance of all or any part of the Products shall not be deemed to be a waiver of Buyer's rights under this Agreement or otherwise. Waiver by any party of a right of default under this Purchase Order shall be in writing, and any such waiver shall not be deemed a waiver of any subsequent right or default whether of a similar nature or otherwise.

10. USER OF BUYER'S NAME AND CONFLICT OF INTEREST

Seller agrees that it will not use Buyer's name in any promotional material without Buyer's prior written consent. Seller, its employees and agents shall exercise reasonable care and diligence to prevent any actions or conditions which could result in conflict with Buyer's best interest or those of Buyer's employees and their families, vendors, subcontractors or other third parties arising from this Purchase Order.

11. INDEMNIFICATION

Supplier shall indemnify, defend, protect, and hold Company, its parent company, all affiliated, related, or subsidiary companies, and their respective officers, directors, shareholders, attorneys, accountants, representatives, agents, employees, successors and assigns free and harmless from and against any and all claims, actions including, without limitation, the cost of investigation and testing, consultant's and attorney's fees, remedial and enforcement actions of any kind, administrative or judicial proceedings, causes of action, liabilities, penalties, forfeitures, damages, fines, injunctive relief, losses or expenses (including, without limitation, reasonable attorneys' fees and costs) and/or death of and/or injury to any person and/or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, whether or not foreseeable, by (i) Supplier's failure to comply with any promise, covenant, representation and/or obligation under this Agreement or any other agreement, and/or (ii) Supplier's negligent (whether active or passive) or intentional acts or omissions, and/or (iii) any third party claim that the goods purchased and sold hereunder infringe or allegedly infringe on such third party's patent, trademark, copyright or any other intellectual property right(s) and/or the handling of any goods by Supplier following delivery from Company. For purposes of this indemnity provision, any acts or omissions of Supplier, or by employees, agents, assignees, successors and assigns, contractors and subcontractors of Supplier or others acting for or on behalf of Supplier shall be strictly attributable to Supplier. Upon notification, Seller shall promptly assume full responsibility for the defense of any suit or proceeding which may be brought against Buyer or any of its subsidiaries, affiliated companies, agents and vendors in connection with the above, Buyer reserves the right to control such suit or proceeding.

12. SET-OFF PROVISION

In the event Seller shall fail in any way to perform hereunder, Buyer may set off as appropriate, any performance or payment due by Buyer under this Purchase Order or any other agreement between the parties.

13. BUYER'S PREMISES AND INSURANCE REQUIREMENTS

Seller is an independent contractor. All persons or equipment entering Buyer's property at the direction of the Seller shall be servants of the Seller and not of the Buyer. All such persons who enter onto Buyer's property shall observe all safety, health, security and traffic regulations.

Seller shall maintain in force, during the term of this Agreement and for as long thereafter as a practical need exists, one or more policies of liability insurance which shall cover all liabilities of Seller and Buyer, whenever arising, attributable to Products sold under this Purchase Order and obligations related to same. The limits of the coverage shall include coverage for premises and operations; products and completed operations; contractual liability; broad form property damage, and personal injury liability. The policy shall have coverage for bodily injury and property damage of minimums of \$5,000,000 each occurrence; \$5,000,000 for personal injury liability; \$5,000,000 aggregate for products/completed operations; and \$5,000,000 general aggregate. All insurance obtained by Seller shall contain a severability of interest clause, shall be primary and non-contributory in relation to any insurance carried by Buyer, and shall include a waiver of Seller's insurer's rights of subrogation against Buyer.

As soon as possible but not later than thirty (30) days from the date of this Purchase Order, (January 1 for all succeeding years), Seller shall deliver to Buyer a certificate from Seller's insurer evidencing the required coverage and naming Buyer, its subsidiaries, affiliates, corporate parent, directors, officers, and employees as additional insureds with respect to liability or any claims of liability arising out of the sale of Products to Seller and the use thereof, including the design and manufacture thereof. The certificate shall provide on its face that the policies it represents will not be terminated, amended, or allowed to expire without thirty (30) days' prior written notice to Buyer. Such certificate shall also indicate any deductible and/or self-insured retention, and the effective expiration date(s).

14. USE OF SPECIFICATION AND INFORMATION AND CONFIDENTIALITY

This Purchase Order and all specifications, drawings and technical information revealed directly or indirectly to Seller in connection with this Purchase Order or resulting from work hereunder shall remain the property of the Buyer, shall be returned at Buyer's request, shall be held in confidence by Seller and not be disclosed to anyone, and shall not be used by Seller for any other purpose except to fulfill Seller's obligations under this Purchase Order.

15. COMPETITIVE PRICES

If during the period of performance of this Purchase Order, Buyer is offered Products of equal quality and in like quantity at a lower price for any then undelivered Products, Buyer may accept the lower offer and the quantity so purchased will be deducted from the quantity deliverable by Seller hereunder without liability to Buyer.

16. HEALTH

Seller shall furnish to Buyer current Materials Safety Data Sheets in a timely fashion, including warnings and health information concerning the Products and/or the containers for such Products sold or delivered hereunder.

17. CONTAINERS

All containers containing Products and/or the containers for such Products sold or delivered sold hereunder, including those that may contain residue, are required to have appropriate EMERGENCY RESPONSE information. Notwithstanding the fact that Buyer may be responsible for shipping, insuring or the risk of loss relating to any such container, it shall be the responsibility of the Seller throughout the shipping cycle (including when Buyer is returning any such container to Seller) to indicate clearly the information on the container carrying Products, and the Seller shall in all cases be responsible for having the appropriate EMERGENCY RESPONSE information and any other information required under applicable law clearly indicated on each container.