

Standard Terms & Conditions



WSP Comércio de Alimentos e Participações Ltda.

Effective January 5, 2017

1. CONTRACT. In the absence of a written agreement signed by Buyer and WSP Comércio de Alimentos e Participações Ltda. (“Seller”), these terms and conditions (“Terms”) and those in Seller’s sale confirmation (“Confirmation”) (together, the “Contract”) govern the offer, sale and delivery of products or services (the “Products”) by Seller to buyer or its affiliates, principals, agents, franchisees, distributors and other parties related to buyer (the “Buyer”). By accepting Seller’s quotation or transmitting to Seller a purchase or confirmation order, delivery instruction, receipt, acknowledgement or similar document (oral, written or electronic) (each, an “Order”) or engaging Seller to perform any service, including (but not limited to) tolling, distribution, or co-packing, Buyer evidences its agreement to be bound by this Contract.

2. DELIVERY TERMS.

2.1 Orders shall be placed at least 10 days before the requested delivery date. For Orders that involve multiple deliveries at different times (“Volume Contract”), Buyer’s Orders shall indicate the specific volume of Product to be delivered and location of delivery. Failure of Buyer to provide such Order does not relieve Buyer of its obligation to purchase 100% of the volume set forth in the Volume Contract.

2.2 The location from which Products sold hereunder shall be produced or delivered is stated in the Confirmation. Seller is not obligated to fill any Order with production from another location.

2.3 Seller shall use diligent efforts to fill Orders within the delivery period requested by Buyer, subject to Product availability. The inability of Seller to fill an Order within the delivery period requested by Buyer does not entitle Buyer to claim damages of whatsoever nature, or release Buyer from its obligations under the Contract, including its obligation to place orders and take subsequent deliveries in the case of Volume Contracts.

2.4 The “Delivery Location” for Product is Seller’s facility (“Seller’s Facility”), unless otherwise specified in the Confirmation. If Buyer requests the Delivery Location be Buyer’s facility (“Buyer’s Facility”), then the costs of such delivery will be added to the Price or shown as a line item on the invoice and on the Confirmation (“Delivered Pricing”). Delivered Pricing shall be made available to Buyer only as a convenience and on the condition that: (a) in the event actual freight and insurance costs exceed that estimated in Delivered Pricing, Buyer remains responsible for all actual freight and insurance costs incurred in shipping Product to Buyer’s Facility, including but not limited to costs of whatsoever nature incurred with transport by rail, intermodal, truck, freight or fuel surcharge and (b) Seller shall not be held responsible for any risks, including in relation to delivery errors or damages attributable to freight carrier or others, including claims of contamination or for penalties, late charges, fees, taxes or any other claims (collectively, “Delivery Claims”). Notwithstanding the foregoing, Seller (without undertaking any responsibility) will submit Buyer’s Delivery Claims to the freight carrier and make reasonable attempts to seek reimbursement of the Delivery Claims.

2.5 Buyer will take delivery of the Product during the delivery period reflected on the Confirmation, and, unless otherwise indicated in the Confirmation, in approximately equal monthly installments. If Buyer is unable or refuses to accept delivery of Product, then Seller, at its discretion and in addition to any other

rights or remedies Seller, may (a) impose a charge each month on all Product which has not been timely accepted for delivery by Buyer in an amount equal to 1.5% of the gross price of such Product and/or (b) cancel the Order. Buyer shall also pay any additional costs of whatsoever nature, including increased duties, fees, taxes or other charges or tariffs resulting from any delivery delay.

3. TITLE AND RISK OF LOSS. Title and risk of loss to Product shall transfer to Buyer at the Delivery Location when possession of Product is taken by Buyer (directly or through the freight carrier) (the “Tender of Delivery”), without prejudice to the terms of clause 2.4, item (b).

4. PRICES AND INVOICES.

4.1 Unless otherwise stated in the Confirmation, Prices for Product are per Kg (kilogram); excluding certain food service and grocery Products which are priced per unit (the “Price”). Charges for drums, totes and pallets are in addition to the Price, unless otherwise indicated on the Confirmation. Price is exclusive of any sales, processing, excise, value added or other taxes, and when required by law, such taxes shall be added to the purchase price of the Product on the related invoice and paid by Buyer.

Seller shall invoice Buyer promptly after Tender of Delivery. Unless otherwise indicated on the Confirmation, Buyer shall pay Seller for Product purchased within 11 days of issuance of the invoice date in the currency indicated on the Confirmation, by electronic payment to the Seller’s designated bank account or by wire transfer of immediately available funds to an account designated by Seller. In the event Buyer prefers to pay by check, such check shall be deposited into the bank account identified by the Seller and shall only be considered as paid once the check is effectively deposited into such account, and funds are available to the Seller.

4.2 Claims regarding discounts or Product not made within 7 (seven) days from the date of delivery of Product to Buyer shall be deemed waived and released by Buyer.

4.3 Buyer is not entitled to set-off amounts due or claimed due from Seller against any amounts Buyer owes to Seller.

4.4 Buyer agrees that any statement on a payment transmission or indicating that it is “payment in full” or other statements to that effect is a nullity unless acknowledged and accepted by Seller in writing and that cashing such check does not constitute partial or full acceptance.

4.5 Any amounts which are not paid when due by Buyer shall bear the following default penalties in favor of Seller: (i) default interest rate from the date payment was due until the date payment is received by Seller, at a rate of 1% (one percent) per month; (ii) adjustment by the inflation index IGPM-FGV; and (iii) a penalty of 5% (five percent) over the due and unpaid amounts. Being agreed that, as per the terms of article 416, sole paragraph of the Brazilian Civil Code, the Seller shall be entitled to claim indemnification for the losses that eventually exceed the penalty amount agreed herein.

5. BUYER’S CREDIT. Any credit granted to Buyer may in the sole discretion of Seller be reduced or withdrawn at any time, any previously approved payment terms to the contrary notwithstanding. Seller reserves the right to withhold, suspend or

stop in transit any shipment should any doubt arise as to Buyer's credit or financial responsibility. This is a prerogative of the Seller and may be taken by Seller even in case there is no evidence of an adverse effect to the Buyer's credit condition.

6. SELLER'S WARRANTY

6.1 Seller represents and warrants that the Product comprising each shipment or other delivery hereafter made by Seller is hereby guaranteed, as of the date of such shipment or delivery, to satisfy Seller's product specifications for the article, and not to be, on such date, without prejudice to Brazilian rules on the matter: (a) adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act (the "Act"); (b) an article which may not, under the provisions of section 404 or 505 of the Act, be introduced into interstate commerce; and (c) adulterated or misbranded within the meaning of food, drug and cosmetic laws; provided that no guarantee concerning misbranding is given if an article is delivered under a label designed or furnished by Buyer and/or pursuant to instructions of the Buyer.

6.2 THE FOREGOING WARRANTY IS LIMITED AND IS IN LIEU OF ANY OTHER WARRANTY, AND SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, WHETHER AS TO MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.

6.3 In the event Buyer rejects Product as non-conforming to this warranty, Buyer shall hold such Product until Seller removes the Product or provides Buyer with other reasonable instructions. Seller's liability under this warranty is limited to either replacing the non-conforming Product or refunding to Buyer its purchase price paid for such Product. Buyer is prohibited from selling rejected Product in a secondary market without Seller's written consent.

6.4 All claims of Buyer must be brought within 7 (seven) days of delivery of the Product to Buyer regardless of their nature.

6.5 Any continuing guaranty provided by Seller to Buyer remains subject to, and governed by, the terms of the Contract.

7. INDEMNIFICATION.

7.1 Except to the extent caused by the negligent or willful acts or omissions of Buyer or other third parties, Seller shall indemnify and defend Buyer for (a) claims of third parties brought against Buyer for bodily injury or property damage caused by physical defects in the Product; (b) claims of governmental authorities incurred as a result of any breach of the guaranty set forth above.

7.2 Any indemnification provided hereunder is on the condition that notice of any action, claim or proceeding within the scope of this indemnity shall be provided promptly to Seller. Further, Seller's obligation to defend is conditioned upon Seller selecting, managing and controlling counsel.

8. LIMITATION ON LIABILITY. THE LIABILITY OF SELLER FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF BUYER'S PAYMENTS FOR THE PRODUCT THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL SELLER OR ITS AFFILIATES BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGES BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, DOWNTIME, PRODUCTION FAILURE, IMPAIRMENT OF OTHER PRODUCTS OR INGREDIENTS, FOR ANY REASON OR UNDER ANY THEORY OF LIABILITY WHATSOEVER.

9. TERMINATION AND CERTAIN REMEDIES. If either party breaches any of the material provision of the Contract, the other party shall have the right to terminate the Contract upon 30 days' written notice (10 days in the case of a payment default) whereupon the Contract shall terminate unless the breach complained of is corrected within such notice period. Nothing herein shall be deemed as limiting the rights and remedies Seller. If the Buyer shall (a) become bankrupt or insolvent, including in case of filing of approval of a judicial or extrajudicial recovery, (b) file for a petition therefor, (c) make an assignment of material rights and/or assets for the benefit of creditors, or (d) have a receiver appointed for its assets, which appointment shall not be vacated within 60 days after the filing, then the Seller shall be entitled to terminate the Contract immediately upon written notice to Buyer.

10. FORCE MAJEURE. A party shall not be liable for the inability of that party to commence or complete its obligations (excluding the obligation of payment) hereunder by the dates herein required resulting from delays caused by strikes, insurrection, acts of God, war, emergencies, shortages or unavailability of materials, weather, change in law or other similar causes ("Force Majeure"), which shall have been timely communicated to the other party. The occurrence of the Force Majeure shall extend the period for the performance of the obligation (excluding the obligation of payment undertaken by the Buyer), for the period equal to the period of any such delays; provided that such party shall continue to perform to the extent feasible in view of such Force Majeure; and provided further, that if such Force Majeure shall continue for a period of six months, either party shall have the right to terminate this Contract upon written notice to the other. In the event of the occurrence of a Force Majeure event, Seller shall have the right, but not the obligation, to allocate Product among its Buyers.

11. COPACKERS. Buyer may fulfill its purchase obligations under the Contract through one or more of its authorized copackers; provided that Buyer designates such copackers in writing to Seller. Seller shall accept purchase orders from designated copackers as purchase orders delivered under the Contract and Seller shall, as a matter of convenience to Buyer, invoice such copackers directly for payment of Products delivered to them; however, in the event of any non-payment by copacker, Buyer remains responsible for payment to Seller. The purchase and sale of Products to Buyer's copackers shall be subject to all of the terms and conditions of the Contract and Buyer represents and warrants that it has authority to bind its copackers to the terms and conditions of the Contract.

12. GOVERNING LAW AND JURISDICTION. The Contract has been entered into and shall be construed and enforced in accordance with Brazilian law. Venue and jurisdiction for any proceedings arising out of the Contract shall lay exclusively in the state court of São Paulo, State of São Paulo, Brazil.

13. ASSIGNMENT. Except to the extent provided herein, Buyer shall not have any right to assign the Contract, or any rights or obligations hereunder, without the written consent of Seller; provided, however, that upon the sale of all or substantially all of the assets, business and goodwill of the Buyer to another company, or upon the merger or consolidation of the Buyer with another company, the Contract shall be binding upon both Buyer and the company purchasing such assets, business and goodwill, or surviving such merger or consolidation, as the case may be, in the same manner and to the same extent as though such other company were the Buyer. Further, and notwithstanding anything herein to the contrary, Buyer consents to the assignment from time to time of any part of Seller's rights to payment hereunder in respect of invoices

addressed to Buyer or its Affiliates (a "Receivable"), and in connection with such assignments, and notwithstanding any confidentiality agreements to the contrary, Seller may disclose the terms of the contractual arrangements between Buyer and Seller solely for the purpose of assigning any Receivables and in order for assignee to collect such payments to which it may become entitled. Subject to the foregoing, the Contract shall inure to the benefit of, and be binding upon, the parties hereto and their legal representatives, successors, and permitted assigns.

14. BUYER'S USE OF PRODUCTS.

14.1 Notwithstanding the compliance with Brazilian law, the Buyer acknowledges that U.S. export control laws apply to the sales contemplated in this Contract. Buyer warrants that it will not knowingly sell or permit the resale of Products to any person located in, or any person who will resell to a person located in, any country which is subject to an embargo under the U.S. Department of Commerce Bureau of Industry and Security, the U.S. Department of Treasury Office of Foreign Assets Control Regulations, or similar laws and regulations. Additionally, Buyer understands and acknowledges that the United States maintains lists of persons and entities prohibited from participating in any U.S. export or re-export transaction (http://www.export.gov/ecr/eg_main_023148.asp). Whenever Seller believes that a violation of the U.S. export control laws may occur or has occurred, Seller reserves the right to request additional information regarding the end-user and/or destination of the Products and Buyer agrees to provide such information. Seller reserves the right to refuse to proceed with any transaction where Seller determines that the transaction may violate the U.S. laws and to terminate and discontinue doing business with any Buyer that Seller determines has engaged in transactions placing Seller at risk of violation of such laws.

14.2 Buyer represents and warrants that it shall use and sell all Products ordered herein in accordance with applicable law, statute, ordinance, regulation, code or standard ("Laws and Standards"). Except as expressly stated in this Contract or in the Seller's specifications, Seller makes no promise or representation that the Product shall conform to any other Laws and Standards. Buyer shall be exclusively responsible for ensuring compliance with all Laws and Standards associated with its intended use of the Products.

15. PRIVATE LABEL. In the event Product will be privately labeled at Buyer's request ("Private Label Product"), then Buyer shall provide Seller with written specifications for packaging ("Packaging Specifications"). Unless otherwise agreed to by the parties in writing, the printing and supplying of labels, bags, canisters, boxes, or other like Products ("Packaging Materials") required to package Product pursuant to the Packaging Specifications shall be provided by, and at the expense of, Seller. Buyer, at its expense and responsibility, shall provide all design, content, and artwork necessary for the creation or modification of Packaging Materials in accordance with the Packaging Specifications. Notwithstanding anything herein to the contrary, Buyer shall solely be responsible for the content and design of Packaging Materials. In the event this Contract expires or is terminated for any reason, other than breach by Seller, Buyer shall purchase from Seller any remaining packed Private Label Product and any unused Packaging Materials ordered or maintained in inventory. Buyer represents that it owns, or has the right to use, the trademarks ("Trademarks") which will appear on the Packaging Materials. Buyer warrants that the Trademarks will not infringe the intellectual property rights of any third parties, and Buyer shall indemnify and hold harmless Seller and its respective Affiliates, successors and assigns, harmless from and against any and all actions, claims,

liability, cost, damage or expense, including attorneys' fees and other expenses of defense, arising from or relating to the Trademarks or Buyer's warranty contained in this Section 15.

16. ETHICAL SOURCING. It is Seller's policy to purchase goods and services that are produced and delivered under conditions that uphold fundamental human rights; do not involve the abuse or exploitation of any persons; are grown, produced, manufactured and sold in accordance with the laws of the country of origin; and minimize negative impacts on the environment. Copies of Seller's Code of Ethics and Business Conduct and its Ethical Sourcing Policy are available for download on: www.asr-group.com.

17. ATTORNEYS FEES AND OTHER COURT COSTS. If either party commences an action against the other to interpret or enforce the Contract or as a result of a breach by the other party of the Contract, the prevailing party shall be entitled to recover from the non prevailing party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such action.

18. RELATIONSHIP OF PARTIES. The Contract shall not constitute or be construed as creating a partnership or joint venture between the parties.

19. WAIVER. Any term, condition or covenant of the Contract which may legally be waived, may be waived, or the time of performance thereof extended, at any time by the party hereto entitled to the benefit thereof, and any term, condition or covenant may be amended by the parties hereto at any time. Any such waiver, extension or amendment shall be evidenced by an instrument in writing executed by an officer authorized to execute waivers, extensions or amendments. Seller's failure to strictly enforce any term or condition of this Contract or to exercise any right arising hereunder shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or exercise such right thereafter.

20. FINAL AGREEMENT. This Contract represents the final agreement of the parties with respect to its subject matter and all prior oral or written undertakings, communications, or agreements are superseded and merged herein. No different or additional terms and conditions, including those contained in any Order or agreement previously executed by Seller or in any acceptance or similar document tendered by Buyer, shall in any way become binding on Seller or become part of the Contract and are hereby specifically rejected. In the event the parties have executed a confidentiality or nondisclosure agreement, or Seller is requested to provide a separate continuing guaranty or indemnification agreement, such agreement remains subject to the terms and condition set forth herein, and in the event of conflict, this Contract shall govern.

21. DEFINITIONS. "Affiliates" refers to any Person that controls, is controlled by or is under common control with Buyer or Seller. The term "control" means the ownership, directly or indirectly, of fifty percent or more of the voting stock or equity interest of the subject Person. "Person" means any natural person, corporation, unincorporated organization, partnership, association, joint stock company, joint venture, trust or government, or any agency or political subdivision of any government, or any other entity. "Buyer" refers to the party who is purchasing Product hereunder. "Seller" refers to WSP Comércio de Alimentos e Participações Ltda.