

Litehouse, Inc. Purchase Order - Standard Terms and Conditions

STANDARD TERMS AND CONDITIONS OF PURCHASE

1. TERMS OF AGREEMENT

This purchase order, together with these terms and conditions, and any attachments and exhibits, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the "Purchase Order"), constitutes the entire and exclusive agreement between Litehouse Foods, Inc. ("Litehouse") and the supplier (the "Supplier") identified in the Purchase Order. Litehouse's submission of the Purchase Order is conditioned on Supplier's agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall not form a part of the Purchase Order, even if Supplier purports to condition its acceptance of the Purchase Order on Litehouse's agreement to such different or additional terms. Supplier's electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance constitutes Supplier's acceptance of these terms and conditions. The Purchase Order does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. Notwithstanding the foregoing, if a master agreement covering procurement of the Products or Work described in the Purchase Order exists between Supplier and Litehouse, the terms of such master agreement shall prevail over any inconsistent terms herein.

2. DELIVERY

2.1 Time is of the essence in Supplier's performance of its obligations under Section 3 of the Purchase Order.

2.2 If Supplier delivers Work or Products after the Delivery Date, Litehouse may reject such Work or Products.

2.3 Litehouse will hold any Work or Products rejected under this Purchase Order at Supplier's risk and expense, including storage charges, while awaiting Supplier's returns shipping instructions. Supplier will bear all return shipping charges, including without limitation, insurance charges Litehouse incurs on Supplier's behalf. Litehouse may, in its sole discretion, destroy or sell at a public or private sale any rejected Work or Products for which Litehouse does not receive return shipping instructions within a reasonable time, and apply the proceeds, if any, first toward any storage charges.

2.4 Supplier will preserve, pack, package and handle the Work or Products so as to protect the Work or Products from loss or damage and in accordance with best commercial practices in the absence of any specifications Litehouse may provide. Without limiting the foregoing, Supplier shall observe the requirements of any local laws and regulations relating to hazardous work, including, without limitation, with respect to its accompanying information, packing, labeling, reporting, carriage and disposal.

2.5 Supplier will include with each delivery of Products a packing list identifying the Purchase Order number, the Litehouse part number for each of the Products (if applicable), a description and the quantity of each of the Products, and the date of shipment.

2.6 Unless Litehouse expressly instructs otherwise, Supplier will deliver all Work or Products to Litehouse's plant at the address set forth in the Purchase Order. Risk of loss for the Products does not pass to Litehouse until acceptance in accordance with Section 5.

3. PRICE AND PAYMENT

3.1 Unless otherwise specified in the Purchase Order, the price for the Work or Products includes all taxes and other charges such as shipping and delivery charges, duties, customs, tariffs, imposts and government-imposed surcharges. Supplier will, at Litehouse's request, break-out from the price all such taxes and other charges, in its invoices.

3.2 Litehouse will pay Supplier the price in accordance with the payment terms set forth in the Purchase Order following the later of: (i) the Delivery Date; (ii) the date of Litehouse's acceptance of

all of the Work; or (iii) Litehouse's receipt of a properly prepared invoice. Litehouse may, at any time, set-off any amounts Supplier owes Litehouse against any amounts Litehouse owes to Supplier.

4. OWNERSHIP AND LICENSE

4.1 Litehouse is the sole and exclusive owner of all Work and Products. Supplier irrevocably assigns and transfers to Litehouse all of its worldwide right and title to, and interest in, the Work or Products, including all associated Intellectual Property Rights.

4.2 Notwithstanding Section 4.1, Supplier grants to Litehouse a non-exclusive, worldwide, royalty-free, irrevocable, perpetual, transferable, sub-licenseable license to any Intellectual Property Rights in the Work or Products which arose outside the scope of the Purchase Order to the extent necessary for Litehouse to exercise its rights in the Work or Products as reasonably contemplated by the Purchase Order.

5. INSPECTION AND ACCEPTANCE

Litehouse may reject any or all of the Work or Products which does not conform to the applicable requirements within 10 business days of Supplier's delivery. At Litehouse's option, Litehouse may (i) return the non-conforming Work or Products to Supplier for a refund or credit; (ii) require Supplier to replace the non-conforming Work or Products; or (iii) repair the non-conforming Work or Products so that it meets the requirements. As an alternative to (i) through (iii), Litehouse may accept the non-conforming Work or Products conditioned on Supplier providing a refund or credit in an amount Litehouse reasonably determines to represent the diminished value of the non-conforming Work or Products. Litehouse's payment to Supplier for Work or Products prior to Litehouse's timely rejection of such Work or Products as non-conforming will not be deemed as acceptance by Litehouse.

6. REPRESENTATIONS AND WARRANTIES

6.1 Supplier represents and warrants that (i) it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order; (ii) it has the right and unrestricted ability to assign the Work to Litehouse including, without limitation, the right to assign any Work performed by Supplier Personnel and Subcontractors; (iii) the Work, and Litehouse's use of the Work, do not and will not infringe upon any third party's Intellectual Property Rights, right of publicity or privacy, or any other proprietary rights, whether contractual, statutory or common law; (iv) Supplier will not disclose to Litehouse, bring onto Litehouse's premises, or induce Litehouse to use any confidential or proprietary information that belongs to anyone other than Litehouse or Supplier which is not covered by a non-disclosure agreement between Litehouse and Supplier; (v) Software supplied by Supplier does not contain any Harmful Code; (vi) Supplier's Work or Products conforms to Litehouse's specifications, Supplier's quotation or proposal, and Supplier's brochures or catalogs, and if none of the foregoing is applicable, then such Work or Products is suitable for the intended use; and (vii) no Products contain or include components that contain a chemical substance or mixture that is or becomes subject to a reporting requirement under Section 8(e) of the Toxic Substances Control Act, 15 U.S.C. Section 2607(e), as in effect at time of shipment.

6.2 Litehouse warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

6.3 TO THE EXTENT ALLOWED BY APPLICABLE LAW, NO OTHER WARRANTIES ARE MADE BY LITEHOUSE, EITHER EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. ASSIGNMENT AND SUBCONTRACTING

7.1 Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without Litehouse's prior written consent, which Litehouse will not unreasonably withhold. Litehouse may, at its option, void any attempted assignment or delegation undertaken without Litehouse's prior written consent.

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7.2 To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

8. TERM AND TERMINATION

8.1 The Purchase Order will remain in effect with respect to any Statement of Work (SOW) already issued prior to expiration of the term of the Purchase Order until such SOW is either terminated or the Work is completed and accepted.

8.2 Litehouse may terminate this Purchase Order, any SOW, or both at any time, for no reason or for any reason, upon written notice to Supplier. Upon receipt of notice of such termination, Supplier will inform Litehouse of the extent to which it has completed performance as of the date of the notice, and Supplier will collect and deliver to Litehouse whatever Work then exists. Litehouse will pay Supplier for all Work performed and accepted through the effective date of the termination, provided that Litehouse will not be obligated to pay any more than the payment that would have become due had Supplier completed and Litehouse had accepted the Work. Litehouse will have no further payment obligation in connection with any termination.

8.3 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

9. CONFIDENTIAL INFORMATION AND PUBLICITY

9.1 The parties shall treat the terms, conditions, and existence of the Purchase Order as Confidential Information as defined in the NDA.

9.2 Supplier shall obtain Litehouse's written consent prior to any publication, presentation, public announcement, or press release concerning its relationship as a supplier to Litehouse.

10. INDEMNIFICATION

10.1 As used in this Section, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party may be obligated to defend, indemnify and hold the other party harmless.

10.2 Supplier shall defend, indemnify and hold Litehouse harmless from and against any and all Claims as incurred, arising out of or in connection with any (i) act or omission of Supplier (including its Subcontractors) in the performance of the Purchase Order; or (ii) any infringement of a third party's Intellectual Property Rights or any other rights.

10.2 Supplier will indemnify and hold the Litehouse harmless from and against any and all Claims, as incurred, arising out of any negligent or willful acts or omissions of Supplier which results in personal injury (including death) or damage to tangible property (not including lost or damaged data).

10.3 Supplier will provide the Litehouse with prompt written notice of the Claim and permit the Litehouse to control the defense, settlement, adjustment, or compromise of any Claim. Litehouse may employ counsel at its own expense to assist it with respect to any Claim.

10.4 If a third party enjoins or interferes with Litehouse's use of any Work or Products, then in addition to Supplier's obligations under this Section, Supplier will use its best efforts to (i) obtain any licenses necessary to permit Litehouse to continue to use the Work or Products; (ii) replace or modify the Work or Products as necessary.

10.5 Nothing in this Section shall limit any other remedy of the parties.

11. LIABILITY

11.1 NOTWITHSTANDING ANYTHING ELSE IN THE PURCHASE ORDER OR OTHERWISE, LITEHOUSE WILL NOT BE LIABLE TO SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THE PURCHASE ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY AMOUNTS IN EXCESS IN THE AMOUNT LITEHOUSE PAID TO SUPPLIER IN THE SIX MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO SUCH LIABILITY.

11.2 IN NO EVENT WILL LITEHOUSE BE LIABLE TO SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE PURCHASE ORDER, WHETHER OR NOT LITEHOUSE WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

11.3 THE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. NOTHING IN THE PURCHASE ORDER LIMITS EITHER PARTY'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH, OR PHYSICAL DAMAGE TO PROPERTY OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

12. INSURANCE

Supplier will secure and maintain insurance providing coverage for liabilities to third parties for bodily injury (personal injury) and damage to property in amounts sufficient to protect Litehouse in the event of such injury or damage, and will be in compliance with any and all laws, regulations or orders addressing the liabilities of an employer to its employees for injuries and disease suffered in connection with employment. Supplier further will maintain such additional types and limits of insurance as is customary for a company of similar size and similar operations to Supplier in the jurisdiction or jurisdictions in which Supplier's operations take place.

13. COMPLIANCE WITH LAWS

13.1 Supplier represents and warrants that it will comply with all applicable local and national laws and regulations pertaining to its performance of its obligations under this Purchase Order, including Executive Order 11246 of September 24, 1965, and with all relevant rules, regulations (including 41 CFR Sec. 60-1.4) and orders and does not discriminate in Employment against any person due to race, color, religion, sex, or national origin.

13.2 Supplier also represents and warrants that Supplier does not employ or utilize any forced labor or slavery in its operations, facilities, or offices; and that Supplier does not knowingly purchase materials or ingredients from businesses, organization, or individuals that engage in human trafficking, forced labor or slavery; and that Supplier does not knowingly subcontract services, operations, processes, or production to any organizations or businesses that engage in human trafficking, forced labor or slavery.

14. GOVERNING LAW

The Purchase Order will be construed in accordance with, and all disputes will be governed by, the laws of the State of Idaho, without regard to its conflict of laws rules. The parties specifically waive application of the UN Convention on Contracts for the International Sale of Goods. Supplier irrevocably consents to the personal jurisdiction of the state and federal courts in and for Bonner or Kootenai Counties, Idaho, and irrevocably waives any claim it may have that any proceedings brought in such courts have been brought in an inconvenient forum.

15. GENERAL

Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the front of the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.