



LOCHHEAD MANUFACTURING COMPANY

FLAVOR SPECIALISTS
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TERMS AND CONDITIONS OF SALE

All sales and quotations made by Lochhead Mfg. Company ("Seller") are expressly subject to Seller's Terms and Conditions of Sale which shall replace all terms and conditions of Buyer's purchase orders and of any proposals or quotations to Buyer not agreed to by Buyer and Seller in writing prior to the date of sale. Seller specifically objects to any and all terms and conditions that may be contained on Buyer's purchase orders, or any other documents provided to Seller by Buyer.

1. These terms and conditions of sale ("**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by Lochhead Manufacturing Company, a Missouri corporation ("**Seller**"), to any and all buyers of their products ("**Buyer**").
2. Seller's quotation, confirmation of sale and/or invoice and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
3. Notice of claim for any cause whatsoever shall be made within 10 days of delivery. The absence of such notice shall constitute a waiver by Buyer of all claims. If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller's facility located at 527 Axminister Drive, Fenton, Missouri 63026. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the original delivery point.
4. **Limited Warranty.**
 - 4.1. Seller warrants to Buyer that the Goods will, as and when delivered, materially conform to Seller's applicable published specifications in effect as of the date of shipment. Any recommendations made by Seller concerning uses or applications of said Goods are believed reliable, but Seller makes no warranty of any kind whatsoever of results to be obtained by the use of the Goods in Buyer's manufacturing processes or in combination with other substances. Buyer assumes all responsibility and liability for loss or damage resulting from the handling, use or labeling of the Goods whether marketed on their own or used as an ingredient in Buyer's products.
 - 4.2. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 4.1, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
 - 4.3. THE REMEDIES SET FORTH IN SECTION 3 ABOVE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 4.1 ABOVE.
5. **Limitation of Liability.**

- 5.1. Seller's liability ceases on making delivery to the carrier at Seller's shipping point in good condition. Carrier acts as Buyer's agent. Seller shall not be liable for non-arrival of any shipment made under this Contract, which may be lost in transit by water, air, or land, nor for losses, damages or delays in transportation.
- 5.2. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- 5.3. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.
- 5.4. The limitation of liability set forth above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.
- 5.5. It is Buyer's responsibility to determine safe conditions for use of the Goods, proper labeling requirements for Buyer's use of the Goods whether marketed on its own or used as an ingredient in Buyer's products, and to assume liability for loss, injury, damage or expense resulting from improper use or labeling of the Goods.
6. **Choice of Law & Venue:** Buyer and Seller agree that these Terms shall be governed by, construed under and enforced in accordance with regard to the conflicts of law rules of the State of Missouri. St. Louis County Missouri shall be exclusive venue of any legal disputes.