

STANDARD TERMS & CONDITIONS OF PURCHASE

1. OFFER; ACCEPTANCE; ENTIRE AGREEMENT. These Standard Terms & Conditions of Purchase (“Terms”) are part of and incorporated into any purchase order, in any form, (“PO”) submitted in any manner to the individual or entity receiving the PO (“Seller”) by the individual or entity issuing the PO (“Buyer”). These Terms, together with the PO (the Terms and the PO collectively forming the “Agreement”), form the entire agreement between Buyer and Seller to the exclusion of any other terms proffered, promulgated, issued or referenced by Seller. Any documents issued by Seller relating to or acknowledging the PO which contain additional or different terms than those set forth herein are objected to in advance, without any further action being required by Buyer to effect such objection, and shall not form a part of the Agreement. Furthermore, the Agreement shall not be affected by any course of dealing or trade custom between Buyer and Seller. Seller’s execution and return of the PO, acknowledgement of the PO, or performance under the terms of the PO shall constitute its acceptance of all the provisions of the Agreement. All of the goods, products, articles, materials and services covered by the PO shall be referred to hereinafter as the “Goods”.

2, CONTINUING GUARANTY.

- (a) Pursuant to Section 303(c)(2) of the the Federal Food, Drug and Cosmetic Act of June 25, 1938, as amended, (the “Act”) Seller provides the following continuing guaranty: The Goods contained in each shipment or other delivery hereafter made by Seller or its subsidiaries, affiliates, divisions, contractors, subcontractors or agents to, or in the order of, Buyer are hereby guaranteed to be not adulterated or misbranded within the meaning of the Act, and to not be articles which may not, under the provisions of section 404, 505, or 512 of the Act, be introduced into interstate commerce.
- (b) Pursuant to Section 303(c)(3) of the Act, Seller hereby guarantees that all color additives listed in the specifications for the Goods were manufactured by it and are from batches certified in accordance with the applicable regulations promulgated under the Act.
- (c) The guarantees set forth in this Section 2 are continuing in nature and shall survive Buyer’s payment for, acceptance of or inspection (or lack of inspection) of any Goods.

3. WARRANTIES. Seller warrants to Buyer, its affiliates, subsidiaries, divisions, successors, assigns and customers:

- (a) For Goods consisting of goods, products, articles or materials:
 - (i) That the Goods conform to the applicable written specifications issued by Seller or specified by Buyer at the time of purchase;
 - (ii) That the Goods are merchantable and fit for its or their particular purpose;
 - (iii) That the Goods are fit for human consumption;
 - (iv) That (aa) the Goods are not adulterated or misbranded within the meaning of the Act, the Federal Fair Packaging and Labeling Act, including any amendments thereto, the regulations issued thereunder or within the meaning of any state food and drug law, the adulteration and misbranding provisions of which are identical with or substantially the same as those found in the Act, (bb) the Goods will not be produced, shipped or introduced into interstate commerce in violation of the Act, and (cc) all color additives listed in the specifications of the Goods were manufactured by Seller, are from batches certified in accordance with the applicable regulations promulgated under the Act and are in full compliance with all applicable requirements of the Act;
 - (v) That the Goods are not subject to any lien, security interest, encumbrance or restriction on sale, transfer, or otherwise, and Seller has the unlimited authority to sell and deliver unencumbered title to the Goods to Buyer;
 - (vi) That Seller shall have stored all Goods in a clean, dry area, free from insects and rodents, in a manner to prevent entry of foreign material and shall have stored, handled and transported the Goods in accordance with the Goods manufacturer’s storage and handling instructions and in compliance with the FDA Food Safety and Modernization Act (and all amendments thereto and all regulations promulgated thereunder);
 - (vii) That all of Seller’s facilities where the Goods are manufactured, stored, processed and shipped or delivered from maintain a Global Food Safety Initiative certification; and
 - (viii) That the Goods do not, either directly or contributorily, violate or infringe the intellectual property rights, or any other rights, of any third party.
- (b) For Goods consisting of services, Seller warrants that:
 - (i) Such Goods will be provided with due care in a professional and workmanlike manner;
 - (ii) Seller has the necessary knowledge, experience and skills to provide the Goods;
 - (iii) Seller has all required rights, interest and permits and licenses necessary for Buyer to use such Goods or will obtain and maintain the foregoing;
 - (iv) Buyer’s use of the Goods shall not violate or infringe, either directly or contributorily, the intellectual property rights, or any other rights, of any third party;
 - (v) Seller shall observe and comply with all applicable laws, rules, regulations and orders and all specifications, drawings and other documentation delivered to Seller by Buyer; and
 - (vi) Seller shall employ only persons who may lawfully work at the site where the Goods are provided and such persons are trained, qualified and experienced in providing such Goods.
- (c) Seller incorporates by reference and assigns to Buyer, its affiliates, subsidiaries and divisions, and its and their customers and its and their successors and assigns the benefits of all warranties and guarantees given to Seller by persons from whom Seller purchased any Goods or its or their ingredients or components.

(d) The foregoing warranties shall survive delivery, performance, acceptance or inspection (or lack of inspection) of the Goods and shall also survive any payment for the Goods.

4. PRICE; TAXES. The prices specified in the PO shall include all costs and charges to be paid or reimbursed to Seller by Buyer, including without limitation charges for packaging, loading, crating and transportation (including insurance) to F.O.B. destination, unless designated otherwise in the PO. If no price is specified in the PO, the Goods shall be billed at the lower of the price last charged or quoted to Buyer by Seller or the prevailing market price. No charge in addition to the prices will be allowed without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Any tax, tariff, assessment, impost, duty, levy or similar charge which is imposed by any governmental authority upon or on account of the PO or the Goods designated in the PO is included by Seller in the prices for the Goods and shall be paid by Seller, unless specifically designated otherwise in the PO. In the event that the PO provides that Buyer bear responsibility for any tax, assessment, tariff, levy, impost or duty, Seller shall separately itemize such charges on its invoice(s).

5. INVOICE; DISCOUNTS; PAYMENT TERMS. Seller shall issue, on the date of shipment, an invoice for each shipment made against the PO. Each invoice must contain the PO number and quantities and weights of Goods and shall be accompanied by an original bill of lading and any other documentation requested by Buyer in the PO. Buyer shall receive Seller's standard or negotiated discount whether or not the discount is shown on Seller's invoice and Buyer may adjust payment against the invoice to reflect any such discount. Payments may be by check, electronic funds transfer and/or procurement card. Unless provided to the contrary in the PO, payment terms shall be forty-five (45) days from the later of Buyer's (i) receipt of an undisputed invoice or (ii) receipt of the Goods.

6. PACKAGING; SHIPPING; SHELF LIFE. All shipping containers for the Goods shall be packed, packaged and shipped to (i) ensure safe arrival at Buyer's destination designated on the PO; (ii) comply with the requirements of common carriers and applicable laws, rules, regulations and orders; and (iii) if Buyer has agreed in writing to pay for shipment, secure the lowest transportation costs. Each shipping container must be marked clearly to show the PO number and the gross, tare and net weights of and quantity of the Goods in such container, and an itemized packing list showing all such information must be packed with the Goods. Buyer's count or weight of the shipped Goods shall be conclusive. Buyer will not be responsible for deliveries which do not correspond to a valid PO number. All Goods shipped to Buyer, upon Buyer's receipt, shall have a minimum remaining shelf life of not less than seventy percent (70%) which remaining shelf life shall be determined by a fraction where (i) the numerator is the remaining shelf life of the Goods on the date of receipt by the Buyer and (ii) the denominator is the total shelf life of the Goods on the date of manufacture.

7. PRODUCT CHANGE NOTICE. Seller shall provide not less than thirty (30) days prior written notice to the Buyer of any changes in (including the source of) raw materials, packaging materials, labeling, formulations, specifications, or manufacturing process(es) relating to the Goods. Any notice to Buyer pursuant to this section shall be sent via email to supplier.notification@jmswank.com.

8. DELIVERY. All deliveries are F.O.B. the location designated in the PO by Buyer. In every circumstance, title and all risk of loss shall remain with Seller until the Goods have actually been received and accepted by Buyer. Prior to passage of title and risk of loss to Buyer, Seller shall hold the Goods without risk or expense to Buyer. TIME IS OF THE ESSENCE WITH RESPECT TO ALL PROVISIONS OF THE PO. The Goods must be received by Buyer within the time specified for delivery or performance in the PO, failing which, Buyer reserves the right to purchase such Goods elsewhere and charge Seller with any loss or additional costs and expenses incurred as a result thereof. In addition to its remedies for breach of contract, Buyer has the unconditional right to reject and return, without liability, any Goods received later than the specified date(s) for delivery or performance. Should Seller leave any materials, equipment or other personal property at Buyer's facility in provision of the Goods, risk of loss for the foregoing shall remain solely with Seller.

9. INSPECTION; RESCISSION. Buyer is under no duty to inspect Goods on receipt or prior to Buyer's use or resale. Retention, use, inspection, failure to inspect, payment for or resale of such Goods shall not constitute an acceptance of Goods that are not in compliance with the requirements of the PO and the warranties and guaranties provided in the Agreement and shall not impair any of Buyer's remedies available at law, in equity or by the provisions of the Agreement. Buyer may reject, or revoke its acceptance of, all or any part of the Goods that do not conform with all the provisions of the Agreement. Rejected or revoked Goods will be held at Seller's sole risk and expense for not more than fifteen (15) days pending Seller's reasonable instructions and, if Seller so instructs, will be returned at Seller's sole risk and expense. Rejected or revoked Goods remaining in Buyer's possession after said fifteen (15) day period may be sold for Seller's account, destroyed or otherwise disposed of by Buyer, at Buyer's sole discretion and at Seller's sole expense. Seller shall remit to Buyer the price paid by Buyer for any rejected or revoked Goods, together with all costs of transportation, shipping, unpacking, examining, repacking, reshipping, storing and other like expenses related to the rejected or revoked Goods. If requested by Buyer, Seller agrees to promptly replace any rejected or revoked Goods. Acceptance of non-conforming Goods by Buyer shall not be deemed a waiver of Buyer's right to reject future shipments of non-conforming Goods, seek indemnification hereunder or cancel the PO.

10. CHANGES. Buyer shall have the right at any time before the delivery or performance date specified in the PO to make changes in quantities, in drawings and specifications, in delivery or performance schedules and locations and in methods of shipment and packaging for the Goods. If such changes cause an increase or decrease in the costs for the Goods or in the time required for delivery or performance, Seller shall promptly notify Buyer and, at Buyer's sole discretion, such changes will be withdrawn or the parties will make an equitable adjustment in the prices or the delivery or performance date, as appropriate. Seller agrees to accept any such changes subject to this section; the right to an adjustment shall be deemed waived unless asserted in writing within ten (10) days after Buyer requests the change. Changes in prices or delivery or performance dates shall not be binding on Buyer unless evidenced by a change order notice, which describes such adjustment, issued and signed by a duly authorized representative of Buyer.

11. FORCE MAJEURE; ALLOCATION. Buyer may delay delivery, performance and/or acceptance of the Goods ordered, if due to causes beyond its control. If, at any time, there is a period of shortage of supply of Goods for any reason, including delays beyond Seller's control, Seller shall allocate to Buyer such proportion of its available

inventory that Buyer's purchases of the affected Goods over the preceeding twelve (12) months bears to Seller's total sales of the affected Goods during such period to Seller's other customers.

12. CONFIDENTIALITY; NONDISCLOSURE. Any information concerning products, specifications, systems, materials, drawings, designs, manufacturing, sales, customers, financial information or similar information which is received by Seller from or regarding Buyer or its affiliated companies, subsidiaries or divisions, and any other information received from Buyer which was disclosed to Seller in confidence, or which Seller knows or ought to know to be confidential, is proprietary and confidential. Seller shall not disclose any such confidential information to any third party, nor shall Seller use such confidential information for any purpose other than to fulfill its obligations under the PO. Seller shall not disclose any information concerning the Goods or their intended use by Buyer except to individuals with a need-to-know as strictly necessary for the performance of the PO. Upon request, Seller shall return to Buyer or destroy all confidential information in Seller's possession or under its control. A duly authorized officer of Seller shall certify destruction of any and all confidential information if Seller elects to destroy the foregoing. Seller agrees that none of the information which it provides to Buyer shall be confidential in nature, and any legend, clause, provision or other notice of any document supplied by Seller which is inconsistent with or in addition to the foregoing does not create any obligation on the part of Buyer.

13. INDEMNITY; INSURANCE. Seller agrees, at its own cost and expense, to defend, indemnify and hold harmless Buyer and its affiliated companies, subsidiaries, divisions and its and their directors, officers, employees, agents and representatives, and each of their predecessors, successors and assigns (collectively "Buyer Indemnitees"), from and against all damages (both direct and indirect), liabilities, claims, losses, recalls, costs, fines, penalties and expenses, including without limitation attorney's fees, court costs, loss of production time, profits or business (collectively, "Losses"), arising out of, related to or resulting in any way from: (i) any defect in the Goods, (ii) any breach of the provisions of the Agreement or of any express or implied warranty by Seller or its contractors, representatives or agents, (iii) Seller's, or its contractors', representatives' or agents', performance in connection with the Agreement, (iv) any negligent act or omission or willful misconduct of Seller or its contractors, representatives or agents, or (v) any violation of applicable law, rule, regulation or order by Seller or its contractors, representatives or agents. Buyer shall have the right to actively participate in the defense of any Losses. Seller's indemnification obligations shall attach to all Goods provided pursuant to the Agreement and shall survive the termination or cancellation of the Agreement and shall continue after delivery or performance of and payment for the Goods. For at least five (5) years from the date of delivery or performance of the Goods pursuant to the PO, Seller agrees to maintain insurance coverage satisfactory to Buyer with an insurer with an AM Best rating of not less than A IX and including: (i) commercial general liability insurance (including products and completed operations liability and contractual liability), with limits of at least \$2,000,000 per occurrence and \$5,000,000 in the aggregate and containing a vendors endorsement (CG2015) naming the Buyer Indemnitees as additional insureds, (ii) automobile liability insurance with minimum combined single limits of \$2,000,000 per accident and including a duty to defend, (iii) workers' compensation insurance covering all statutory requirements in the states of operation, (iv) employers' liability insurance with limits of at least \$1,000,000 per accident or disease, (v) commercial umbrella/follow form excess insurance with minimum limits of \$10,000,000 per occurrence and in the aggregate, in excess of the underlying policy limits and with coverage at least as broad as the underlying policies, and (vi) product recall insurance (if the Goods could cause products purchased by Buyer to be recalled) to cover Buyer's expenses associated with recalling Goods provided by Seller, with minimum limits of \$5,000,000 per occurrence and containing coverage for accidental contamination, malicious contamination, product rehabilitation and loss of gross profits. To the extent permitted by law, the insurance policies listed herein must have a waiver of subrogation in favor of the Buyer Indemnitees. All of Seller's insurance policies shall be on a primary basis with Buyer's insurance being non-contributory. Prior to delivery or performance of the Goods pursuant to the PO and thereafter at Buyer's request for such period as Seller provides Goods to Buyer or its affiliated companies, subsidiaries or divisions, Seller agrees to provide Buyer with a certificate evidencing the above required coverages, and, if required by Buyer, certified copies of the policies referenced herein. Certificates of insurance with disclaimers must have an Additional Insured endorsement attached. Insurance coverages herein shall not limit Seller's indemnification obligations under the Agreement nor shall the insolvency of any of Seller's insurers limit or negate Seller's obligations herein.

14. REMEDIES; WAIVER. Buyer shall have all the rights and remedies specified herein in addition to those remedies allowed by law or in equity. All rights and remedies of Buyer herein, at law or in equity are cumulative. Buyer may deduct from any payment due Seller, or set-off against any claim by Seller, any amount which is due to Buyer or any of its affiliated companies, subsidiaries or divisions from Seller or Seller's affiliated companies, subsidiaries or divisions for any reason. Buyer's waiver of any applicable right or remedy in response to a breach of any provision of the Agreement by Seller or its contractors, representatives or agents shall not constitute a waiver of any subsequent breach of the same provision or any other provision(s) of the Agreement. No waiver by Buyer of any provision(s) of the Agreement shall be effective unless such waiver is in writing and signed by a duly authorized representative of Buyer.

15. CANCELLATION; TERMINATION. In addition to its other rights hereunder, Buyer reserves the right to cancel the PO or any part thereof at any time on notice to Seller without any liability therefore if Seller breaches any provision of the Agreement including, without limitation, Seller's failure to meet the specified delivery or performance dates or Seller's delivery or performance of any non-conforming Goods. Buyer also reserves the right to terminate the PO or any part thereof for the sole convenience of Buyer. Upon receipt of notice of termination for the sole convenience of Buyer, Seller shall immediately stop all work under the PO, and shall immediately cause any of its suppliers, contractors or subcontractors to cease such work, and if the subject Goods cannot be sold to another customer or used in connection with another PO of Buyer, Seller shall be paid a reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to the notice of termination. Such charge shall be Seller's sole remedy for such termination. Seller shall not be paid for any work done after receipt of the notice of termination or for any work done by Seller's suppliers, contractors or subcontractors after such date.

16. COMPLIANCE WITH LAW; INDEPENDENT CONTRACTORS. Seller shall at all times comply with all applicable federal, state and local laws, regulations, rules, orders and ordinances, and shall obtain all permits needed to complete the Goods contemplated by the PO. Seller shall furnish certificates of compliance with any

applicable laws, rules, regulations, orders and ordinances on Buyer's request. In the event any of the Goods shall become a banned hazardous substance under the Federal Hazardous Materials Transportation Act or other similar laws, as they may be amended, or be the subject of a recall or market withdrawal determined necessary or advisable by Buyer under the Act, the Federal Hazardous Materials Transportation Act, the Consumer Product Safety Act or any other applicable law or regulation, including amendments thereto, Seller agrees that it will take back all existing stocks of such Goods in Buyer's possession, and will promptly reimburse Buyer for such returned Goods at the price originally paid by Buyer to Seller, plus costs for return shipments to Seller, including any and all costs (direct or indirect) incurred by Buyer in returning such Goods from its customers and/or its customers' customers. The determination as to administration of any such recovery of Goods shall be within Buyer's sole discretion. In the event that Buyer acquires information which requires notification under the Consumer Product Safety Act, including any amendments thereto, or other applicable law, it is understood that Buyer will promptly notify the Consumer Product Safety Commission, other appropriate entities and Seller, without incurring any liability to Seller as a result of such notification(s). The relationship between Buyer and Seller is that of independent contractors. Neither party has any right or authority to bind the other to any obligations or responsibilities and neither will represent or hold itself out as an agent or representative of the other. Seller assumes all obligations under all social security or unemployment insurance legislation, old age benefits or workman's compensation laws of the United States or of any state or other governmental authority with respect to persons employed in the performance of or production of the Goods to be furnished under the PO.

17. ADVERTISING. Seller shall not, without first obtaining the written consent of Buyer, which consent may be withheld in Buyer's sole discretion, in any manner advertise, publish or otherwise disclose the fact that Seller has furnished, or contracted to furnish, to Buyer the Goods ordered under the PO or the relationship of the parties under the Agreement.

18. ASSIGNMENT; INVALIDITY; GOVERNING LAW; SURVIVAL; HEADINGS. Seller may not subcontract or delegate, nor may it assign or transfer to any third party or parties, its obligations under the Agreement without the prior written consent of Buyer, which consent may be withheld in Buyer's sole discretion. Buyer may assign the the Agreement in whole or in part without the written consent of Seller. The invalidity of any provision of the Agreement shall not affect the validity of any other provisions of the Agreement. The Agreement and the transactions in connection therewith shall be governed by the laws of the State of Iowa, without regard to conflict of laws principles. Seller knowingly, voluntarily and intentionally waives, to the fullest extent permitted by law, any right it may have to a trial by jury in any action arising out of or relating to the Agreement. Seller represents that it has consulted or had the opportunity to consult with legal counsel with respect to this waiver. Seller expressly agrees that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. Any provision(s) of the Agreement that expressly or by its or their nature are intended to survive termination or expiration of the Agreement shall survive such termination or expiration in full force and effect. Headings are for convenience only and shall not be construed to limit the rights or obligations of a party or otherwise be used to interpret the Agreement.

19. NOTICES. To be effective against Buyer, any notices or other communication (other than invoices or notices sent pursuant to Section 7 hereof) required or permitted to be given to Buyer pursuant to the Agreement shall be (i) personally delivered, sent by nationally recognized overnight courier, or sent by first class mail, certified with postage and fees prepaid, return receipt requested, to JM Swank, LLC, 395 Herky Street, North Liberty, Iowa 52317, Attn: Legal Department or (ii) sent electronically to contracts@jmswank.com Such notice shall be deemed served at the time delivered or, if mailed, three business days after the date mailed.

20. BUYER'S CONSENT OR AUTHORIZATION. Whenever Buyer's consent, waiver, agreement or authorization is required pursuant to any provision of the Agreement, each such consent must be in a written instrument separate from any printed conditions or form language proffered by Seller, signed by a duly authorized representative of Buyer, and may be granted, withheld or conditioned at Buyer's sole discretion.