



TERMS AND CONDITIONS FOR THE SALE OF RAW MATERIALS

Effective: October 6, 2022

These Terms and Conditions for the Sale of Raw Materials (together with any documents referred to in them) (collectively, these “**Terms**”) form a binding contract between you (“**Buyer**”) and SAM HPRP Chemicals, Inc. dba SAM Nutrition. These Terms govern the sale and purchase of the raw materials (“**Raw Materials**”) specified by order, contract, or other commitment to purchase (collectively, the “**Sales Order**”) from SAM to Buyer. SAM and Buyer may be referred throughout these Terms together as “**Parties**” or individually as “**Party**.”

SAM may revise and update these Terms in its sole discretion, and will provide any updates to the Terms to Buyer in accordance with the Notice provision below. All changes are effective as of the effective date indicated on the updated Terms and apply to all sale of Raw Materials thereafter. Buyer’s entry into further Sales Orders or continued purchase of Raw Materials under preexisting Sales Orders shall mean that Buyer accepts and agrees to the modified Terms.

The Terms 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. The 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.

Delivery.

The Raw Materials will be delivered within a reasonable time after the SAM confirms Buyer’s order in the quantities and on the date(s) specified in the Sales Order or as otherwise agreed in writing by the Parties, subject to availability of the Raw Materials.

Unless otherwise agreed in writing by the Parties, SAM shall deliver the Raw Materials to the location specified by Buyer in the applicable Sales Order (the “**Delivery Point**”) according to the shipping terms as laid out in the applicable Sales Order. Delivery shall be made FOB-Destination. Title and risk of loss or damage to the Raw Materials shall pass to Buyer at the time the Raw Materials are delivered to the Delivery Point. Unless otherwise confirmed in writing by SAM, Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Raw Materials at the Delivery Point.

If for any reason Buyer fails to accept delivery of any of the Raw Materials, or if SAM is unable to deliver the Raw Materials at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk of loss to the Raw Materials shall pass to Buyer; (b) the Raw Materials shall be deemed to have been delivered; and (c) SAM, at its option, may store the Raw Materials until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

If SAM delivers to Buyer a quantity of Raw Materials of up to three percent (3%) more or less than the quantity set forth in the Sales Order, Buyer shall not be entitled to object to or reject the Raw

Materials or any portion of them by reason of the surplus or shortfall and shall pay for such Raw Materials the price set forth in the Sales Order adjusted pro rata.

Any liability of SAM for non-delivery of the Raw Materials shall be limited to replacing the Raw Materials within a reasonable time or adjusting the invoice respecting such Raw Materials to reflect the actual quantity delivered.

Inspection and Rejection of Nonconforming Raw Materials.

Buyer shall inspect the Raw Materials within ten (10) days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Raw Materials unless it notifies SAM in writing of any Nonconforming Raw Materials during the Inspection Period and furnishes such written evidence or other documentation as required by SAM. “**Nonconforming Raw Materials**” means only the following: (a) product shipped is different than identified in Buyer's Sales Order; (b) product's label or packaging incorrectly identifies its contents; or (c) product fails to comply with the specifications contained in the Sales Order or the certificate of analysis provided by SAM at the time of shipment (the “**Certificate of Analysis**”).

If Buyer timely notifies SAM of any Nonconforming Raw Materials, SAM shall, in its sole discretion, (a) replace such Nonconforming Raw Materials with conforming Raw Materials, or (b) credit or refund the Price for such Nonconforming Raw Materials, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If SAM exercises its option to replace Nonconforming Raw Materials, Buyer shall ship, at its expense and risk of loss, the Nonconforming Raw Materials to SAM's facility at the location provided by SAM and SAM shall, after receiving Buyer's shipment of Nonconforming Raw Materials, ship to Buyer, at Buyer's expense and risk of loss, the replaced Raw Materials to the Delivery Point.

Buyer acknowledges and agrees that the remedies set forth in this Section are Buyer's exclusive remedies for the delivery of Nonconforming Raw Materials. Except as provided under this Section, all sales of Raw Materials to Buyer are made on a one-way basis and Buyer has no right to return Raw Materials purchased under these Terms to SAM.

Price and Payment Terms.

Buyer shall purchase the Raw Materials from SAM at the price(s) and payment terms as specified in the Sales Order.

Disclaimer of Warranty; Limitation of Liability.

SAM warrants that the Raw Materials will meet or exceed the Raw Material Specifications in effect as of the date the Raw Materials are shipped to Buyer. **SAM MAKES NO OTHER WARRANTY WITH RESPECT TO THE RAW MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) 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.**

SAM shall not be liable for a breach of the warranty set forth in this Section unless Buyer notifies SAM in writing of any Nonconforming Raw Materials within the Inspection Period and SAM fails to either (a) replace such Nonconforming Raw Materials with conforming Raw Materials, or (b) credit or refund the Price for such Nonconforming Raw Materials, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith.

Further, the SAM shall not be liable for a breach of the warranty set forth in this Section if: (a) Buyer makes any further use of such Raw Materials after giving notice to SAM of Nonconforming Raw Materials; (b) the defect arises because Buyer failed to follow SAM's oral or written instructions as to the storage or use of the Raw Materials; (c) Buyer alters such Raw Materials; or (d) **BUYER NO LONGER POSSESSES THE RAW MATERIALS THROUGH EITHER MEANS OF DISPOSING, SELLING, TRANSFERRING OR OTHERWISE REMOVING THE RAW MATERIALS SUCH THAT BUYER NO LONGER MAINTAINS LEGAL OWNERSHIP.**

THE REMEDIES SET FORTH IN SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, 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 SAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

Compliance with Law.

Each Party shall comply with: (a) all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms; and (b) all export and import laws of all countries involved in the sale of the Raw Materials under these Terms or any resale of the Raw Materials by Buyer. Buyer assumes all responsibility for shipments of Raw Materials requiring any government import clearance. SAM may terminate these Terms if any governmental authority imposes antidumping or countervailing duties or any other penalties on Raw Materials.

Termination.

In addition to any remedies that may be provided under these Terms, SAM may terminate these Terms with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under these Terms and such failure continues for forty-five (45) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

Confidential Information.

All non-public, confidential or proprietary information of SAM, including but not limited to specifications, data, business operations, customer lists, pricing or discounts, disclosed by SAM to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with these Terms is confidential, solely for the use of performing under these Terms and may not be disclosed or copied unless authorized in advance by SAM in writing. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

Force Majeure.

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any provision of these Terms (except for any obligations of Buyer to make payments to SAM hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's (“**Impacted Party**”) reasonable control, including, without limitation, the following force majeure events (“**Force Majeure Event(s)**”): (a) acts of God; (b) flood, fire, earthquake, pandemic, epidemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of the Sales Order; (f) national or regional emergency; (g) shortage of adequate power or transportation facilities; and (h) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice to the other Party as soon as reasonably practicable after learning of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

Assignment; No Third-Party Beneficiaries.

Buyer shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of SAM. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

These Terms are for the sole benefit of SAM and Buyer and nothing in these Terms, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

Governing Law; Submission to Jurisdiction.

All matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota. Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America or the courts of the State of Minnesota in each case located in the City

of Minneapolis and County of Hennepin, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Notices.

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the Parties at the addresses set forth in the Sales Order or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.