



**For vendors interested in doing business with Diamond Foods, LLC., here are the General Terms and Conditions of Purchase Orders.**

“Buyer” shall mean Diamond Foods, LLC., and “Seller” shall mean the parties to whom purchase order is issued.

1. Unless otherwise agreed, Buyer’s payment is due only after delivery of all goods. Buyer has the option to return excess deliveries or partial deliveries at Seller’s expense.
2. Buyer shall have a reasonable time after delivery for inspection, rejection, acceptance or revocation of acceptance of any delivery. Buyer may reject all or any portion of any lot which is defective. Seller shall be responsible for proper packing. If Buyer accepts partial delivery, the price shall be apportioned accordingly and Seller will refund the amount of all transportation cost, handling charges, or partial payments paid or incurred by Buyer on rejected goods. Buyer shall have the right to offset any refunds due from Seller against any other amounts owing on other products purchased from Seller.
3. If shipment or prices are not in accordance with this purchase order or with the representations or guarantees made by Seller, Buyer may refuse to accept and pay for such shipments, or at Buyer’s option, Buyer may accept partial delivery without liability beyond payment; therefore, time is of the essence of this contract.
4. Seller guarantees and warrants that all goods under this contract comply with all state and federal laws and regulations, including, but not limited to, federal and California state occupational health and safety laws and that such products are not adulterated or misbranded with the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and are not such articles as may not be introduced into interstate commerce. Seller warrants that the goods are at least equal in every respect to any sample or specification submitted and Buyer may reject and return at Seller’s expense any goods which, in the opinion of Buyer, are not at least equal quality in every respect to the sample and/or specifications.
5. Seller agrees to protect, indemnify and hold harmless the Buyer from any and all liability, damage and expense, including attorneys’ fees, which may or might be sustained or incurred because of the infringement by the goods supplied by the Seller under this purchase order of any United States patent, trademark or copyright, or claim thereof or because of any claim or action against the Buyer on account of any adulteration or other defective condition of any claim thereof, in any manner involving the goods hereby sold and purchased or any part thereof, except such claims and actions as arise by reason of unauthorized warranties or negligence on the part of the Buyer, its agents and employees, provided prompt written notice be given the Seller of the bringing of any such claim or

action and an opportunity be given the Seller to settle or defend same as the Seller may see fit. In case any apparatus, or any part thereof, furnished under this contract is held to constitute infringement of any U.S. patent and the use of said apparatus or part is enjoined, the Seller shall, at its own expense, either procure for the Buyer the right to continue using said apparatus or part; or replace same with non-infringing apparatus, or modify it so it becomes non-infringing, or remove said apparatus and refund the purchase price and the transportation and installation costs thereof. Nothing herein shall prevent Buyer from providing its own representation at its own expense in the event of litigation against the Buyer.

6. Seller agrees to reimburse Buyer for any expense incurred by Buyer by reason of Seller's failure to make shipments in accordance with and via routing shown on Buyer's purchase order.
7. Undelivered orders are subject to cancellation or postponement after reasonable notice at **Buyer's option in the event** of fire, flood, tempest, earthquake, war, riot, strikes, act of God, or Buyer's discontinuance or suspension of business.
8. **Seller shall not be liable for delays** in delivery caused by strikes, fire, war, acts of God, or other causes beyond his control.
9. If price is omitted from this order, the price shall be the lowest prevailing market price. In such event Seller must notify Buyer in writing before shipment is made of the price for the articles described herein. If Buyer does not approve such price in writing, it shall have the right to cancel this order by written notice to Seller, without further liability on its part. If price is stated herein, it is a firm price. Seller agrees to give Buyer the benefit of any reduction in such price if it should reduce its prices on the same or similar articles prior to shipment or delivery to Buyer.
10. Seller will not charge and Buyer will not pay for cartage, packing, packing cases, reels, drums or other extras of any nature except when such charges are authorized by Buyer in writing.
11. The material and service covered by this order are desired as a complete unit. Performance of any part of this order shall be notice by the Seller of acceptance of the order in full and under the terms as herein set out.
12. All the terms and conditions of this agreement are fully expressed or referred to herein and may not be amended or modified except in writing, signed by the parties hereto.
13. Except as otherwise modified above, all rights and obligations of the parties are to be governed according to the provisions of the California Commercial Code and interpreted according to the laws of the State of California.
14. Buyer's rights hereunder shall vest in and be assigned, at Buyer's option, to any marketing cooperative association on whose behalf Buyer is making this purchase.
15. Government Contracts:
  - a. Seller agrees to comply with all appropriate provisions of Executive Order 11246, as amended or supplemented, and agrees that unless otherwise exempted:
    - i. Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or

- transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. Seller will, in all solicitations or advertisements for employees placed by or on behalf of Seller, state that all qualified applicants will receive consideration for employment without regard for race, color, religion, sex or national origin.
  - iii. Seller will send to each labor union or representative of workers with which he has collective bargaining agreement or other contract or understanding, a notice, to be provided advising the labor union or workers' representative of Seller's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - iv. Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
  - v. Seller will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - vi. In the event of Seller's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized by Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.
  - vii. Seller will include the provisions of Paragraphs (1) through (7) into every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Seller will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction. Seller may request the United States to enter into such litigation to protect the interests of the United States.

- b. If the goods purchased are, to Seller's knowledge, to be used in the performance of a federal government contract, then Seller agrees to comply with any additional provisions concerning the utilization of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.
- c. Seller agrees to comply with all appropriate provisions of Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Era Veteran's Readjustment Assistance Act of 1974 (see paragraph 15, section "A" of general provisions.)