



TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS SHALL CONTROL THE SALE OF MIDWESTERN BIOAG HOLDINGS, LLC ("SELLER") PRODUCTS AND SERVICES (COLLECTIVELY HEREIN, "PRODUCTS"). SELLER'S ACCEPTANCE OF ANY ORDER IS EXPRESSLY SUBJECT TO BUYER'S ASSENT TO EACH AND ALL OF THESE TERMS AND CONDITIONS. BUYER'S ASSENT TO THESE TERMS AND CONDITIONS SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S FAILURE TO SUBMIT WRITTEN OBJECTION, OR FROM BUYER'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR SERVICES ORDERED.

NO ADDITION TO OR MODIFICATION OF THESE TERMS AND CONDITIONS SHALL BE BINDING UPON SELLER UNLESS AN OFFICER OF SELLER AGREES TO SUCH TERMS IN WRITING. IF BUYER'S PURCHASE ORDER OR OTHER CORRESPONDENCE CONTAINS TERMS OR CONDITIONS CONTRARY TO OR IN ADDITION TO THESE TERMS AND CONDITIONS, SUCH ALTERNATE TERMS AND CONDITIONS ARE EXPRESSLY REJECTED BY SELLER UNLESS THE ALTERNATE TERMS ARE CONTAINED IN A SEPARATE CONTRACT OR OTHER WRITING SIGNED BY BOTH PARTIES. THESE TERMS AND CONDITIONS SHALL APPLY TO ALL TRANSACTIONS BETWEEN SELLER AND BUYER.

1. **PRICING; TAXES.** The prices of the Products are those prices specified on Seller's Invoice. Pricing for undelivered Products may be increased in the event of an increase in Seller's cost, change in market conditions or any other causes beyond the Seller's reasonable control. All taxes, transportation costs, duties and other charges are in addition to quoted prices. The amount of any sales, excise, or other taxes, if any, applicable to the Products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with a valid tax exemption certificate. Price quotations are all subject to reconfirmation.

2. **PAYMENT; CREDIT; SECURITY INTEREST.** Payment is due in U.S. dollars. Payment terms are net fifteen (15) from the date of Seller's invoice, unless otherwise stated on Seller's Invoice. Seller may, in its sole judgment, require such other payment terms as Seller deems appropriate, including full or partial payment in advance of shipment. Credit payment terms must have the prior approval of Seller's Credit Department and must be specified in writing on Seller's Invoice. Whenever reasonable grounds for insecurity arise with respect to due payment from Buyer or with respect to Buyer's financial condition generally, Seller reserves the right to stop shipment on notification to Buyer and to demand payment in advance or require reasonable assurance of payment or security, and in the absence thereof, to cancel, without liability, the unfilled portion of Buyer's order. Buyer grants to Seller, and Seller retains, a security interest in all Products furnished by Seller and the proceeds thereof, until the purchase price therefor is fully paid. Seller may file any financing statements and give notice of such security interest to third parties as Seller may determine to be necessary to perfect such security interest.

3. **PAST DUE ACCOUNTS; NO SET-OFF.** A finance charge of the lesser of 1.5% per month (18% - APR) or the highest rate permitted by law will be assessed on all past due accounts. Interest charged on a past due invoice will be assessed from the date of the invoice. Amounts owed by Buyer will be paid without set-off or deduction for any amounts that Buyer may claim are owed by Seller. If Buyer defaults on any payment terms or other terms herein, Seller shall be entitled to its reasonable attorney fees, expenses, court costs and any other costs in connection with collection or other enforcement of this Agreement. Amounts received by Seller may be applied first against interest and collections costs and expenses.

4. **TRANSPORTATION MATTERS.** Unless otherwise specified on Seller's Invoice, all freight, demurrage or other transportation charges shall be the sole responsibility of Buyer. Risk of loss will transfer to Buyer upon tender of Products to Buyer, Buyer's representative, or common carrier. On passage of title, Buyer is then responsible for proper protection and storage of Products and compliance with all applicable laws, statutes, regulations and ordinances ("Laws"). Claims for damage or shortage in transit must be made by Buyer against the carrier, and Buyer shall not withhold payment due Seller pending the settlement of freight claims. Buyer has the responsibility to inspect shipments upon arrival to identify any such damage or shortage and see that appropriate notation is made on any delivery paperwork to support a claim. Without Seller's prior written approval, neither Buyer nor any of its employees/agents will divert or export any of the Products outside the continental U.S. Even with such Seller's approval, Buyer remains fully responsible for and shall defend, hold harmless and promptly reimburse Seller for all claims, losses, costs, expenses, liabilities, penalties, demands and taxes directly caused by or incidental to such diversion and/or export by Buyer.

5. **DELIVERY.** Seller will make a good faith effort to deliver goods in accordance with Buyer's schedule. However, all orders are subject to Seller's ability to make delivery at the time and in the quantities specified, and Seller shall not be liable for damages for failure to make partial or complete shipment or for any delay in making shipments. Buyer shall be liable for any added freight expenses, upcharges or accessorial charges incurred by Seller due to Buyer's order changes or delivery changes, Buyer's delay in furnishing requested information, Buyer's providing inaccurate or incomplete delivery information, delay in unloading shipments at the delivery point that are the fault of Buyer, or any other circumstance or cause beyond Seller's control. Upon delivery, if actual weight per truckload of Products deviates from the invoiced weight, Buyer will be charged based on actual weight.

6. **CUSTOM ORDERS.** From time to time, Buyer may request that Seller purchase custom or proprietary materials or packaging, or that Seller create custom blends (collectively, "Custom Materials") to fill Buyer's orders, which Custom Materials cannot be returned or used in the ordinary course to fill orders for Seller's other customers. If Seller has not exhausted this inventory of Special Materials, and Buyer has issued its last order for related Products, or a period of six (6) months has elapsed since its last order, Buyer shall be liable to Seller for the actual cost to Seller of any remaining inventory of Buyer's Special Materials.

7. **FORCE MAJEURE.** Seller shall not be liable for failure to fulfill its obligations for any confirmed Order or for delays in delivery resulting in whole or in part from acts of God, fire, floods or other catastrophes or severe weather conditions; strikes, lockouts or other labor disruption; wars, civil disturbance, riots or acts of terrorism; embargo delays, raw material market conditions, shortages in or the inability to procure supplies, raw materials, labor, fuel or transportation; epidemics, quarantine restrictions, or any acts or orders of any governmental authority; or any other circumstance or cause beyond the reasonable control of Seller. All such events shall be considered an "Event of Force Majeure" excusing Seller from performance and barring remedies for non-performance. In an Event of Force Majeure, Seller's time for performance shall be extended for a period equal to the time lost as a consequence of the force majeure condition. Seller may, at its option, cancel the remaining performance, without any liability or penalty, by giving notice of such cancellation to the Buyer.

8. **CANCELLATION.** Buyer may not cancel, change, or modify an order without the written consent of Seller and payment to Seller of reasonable cancellation or modification charges (to be solely determined by Seller), including but not limited to all freight or transportation costs incurred by Seller due to the cancellation or modification. Except as otherwise agreed in writing, until Products are shipped, Seller has no obligation under any order submitted by Buyer and may cancel the order at any time prior to shipment.

9. **RETURNS.** No Products shall be returned for credit without first obtaining written consent from Seller.

10. **LIMITED WARRANTY; TIME FOR MAKING CLAIMS.** Seller warrants only that it will convey good title to the Products and that, at the time of shipment, the Products will conform to the published specifications of Seller. Seller's specifications are subject to change at any time without notice to Buyer. NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, IS MADE BY SELLER, AND SELLER HEREBY DISCLAIMS ALL SUCH OTHER WARRANTIES TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Buyer shall examine all Products upon receipt. Buyer must notify Seller of any claim with respect to the Products, warranty, or any other matter related to an order in writing and within ninety (90) days of Seller's delivery of Products (or within thirty (30) days for claims related to billing) or such claim is waived. The sole remedy available to Buyer on account of any defect in the Products shall be limited to the replacement of such defective Products by Seller. In the event the remedy provided herein shall be deemed to have failed its essential purpose, then Buyer shall be entitled only to a refund of the amounts paid to Seller for such defective Products. Any replacement or refund hereunder shall be conditioned on Buyer's submission of proof satisfactory to Seller of the nature and extent of the defect. Use by Buyer of all or some of the Products ordered shall waive Buyer's right to any claim of defective Products and relieve Seller of any obligation to replace Products or issue a refund for the order. Subject to the notification of claim provision above, no action for breach of the contract for sale or otherwise with respect to Products shall be commenced more than one (1) year after the accrual of the cause of action thereto.

11. **BUYER'S USE AND MISUSE.** Buyer represents that it is familiar with the characteristics, qualities and potentialities of the Products. Seller shall not be liable for the results obtained in the use of such the Products, either alone or in combination with other substances, and shall not in any case be liable for injury or death to persons or animals, damages to property or economic loss resulting from or connected with the use, treatment, storage, transportation or handling of the Products. Buyer acknowledges that the bulk nature of some of the Products sold may make it impractical for Seller to include labels or warnings regarding the use or misuse of the Products, and Buyer represents that, following its purchase of the Products, it will include such warnings and labels as are necessary, practical and required by applicable Laws.

12. **LIMITATION OF LIABILITY.** SELLER'S TOTAL LIABILITY FOR ANY CLAIM ARISING UNDER OR IN CONNECTION WITH A TRANSACTION GOVERNED BY THESE TERMS AND CONDITIONS WILL BE LIMITED TO THE NET PURCHASE PRICE ACTUALLY PAID TO SELLER FOR THE PRODUCTS INVOLVED. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES FOR ANY CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, OR TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. BUYER ASSUMES ALL RISKS AND LIABILITY FOR INEFFECTIVENESS OF THE PRODUCTS OR OTHER UNINTENDED CONSEQUENCES THAT MAY RESULT FROM UNFAVORABLE WEATHER OR GEOLOGIC CONDITIONS OR MANNER OF USE OR APPLICATION, ALL OF WHICH ARE BEYOND THE CONTROL OF SELLER. BUYER FURTHER ASSUMES ALL RISKS AND LIABILITY FOR ANY DAMAGE TO PERSONS, ANIMALS OR PROPERTY RESULTING FROM THE USE OF THE PRODUCTS DELIVERED HEREUNDER IN MANUFACTURING PROCESSES OF BUYER OR IN COMBINATION WITH OTHER SUBSTANCES OR OTHERWISE.

13. **INDEMNIFICATION.** BUYER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND SELLER AND ITS PRESENT OR FUTURE EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, INSURERS, AGENTS AND REPRESENTATIVES (COLLECTIVELY, "SELLER INDEMNIFIED PARTIES"), FROM ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, SUITS, PROCEEDINGS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") FOR ANY DAMAGE, INJURY, DEATH, LOSS OR DESTRUCTION OF ANY KIND RELATING TO OR ARISING OUT OF BUYER'S BREACH OF THESE TERMS AND CONDITIONS, OR TO THE EXTENT CAUSED BY BUYER'S NEGLIGENCE OR INTENTIONAL MISCONDUCT WITH REGARD TO ANY ORDER OR ANY PRODUCTS. THIS INCLUDES WITHOUT LIMITATION, LOSS OR DAMAGE TO ANY PROPERTY OR INJURY TO OR DEATH OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, BUYER OR ITS EMPLOYEES), WHETHER ARISING AS A WORKERS' COMPENSATION CLAIM OR UNDER THEORIES OF NEGLIGENCE, TORT, STRICT LIABILITY, INTENTIONAL MISCONDUCT, OR FAULT OF ANY KIND. BUYER WILL REIMBURSE ANY SELLER INDEMNIFIED PARTIES FOR ALL REASONABLE EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) AS THEY ARE INCURRED BY ANY SUCH SELLER INDEMNIFIED PERSON IN CONNECTION WITH INVESTIGATING, PREPARING FOR OR DEFENDING ANY CLAIMS, PENDING OR THREATENED, WHETHER OR NOT SUCH SELLER INDEMNIFIED PERSON IS A PARTY HERETO. THIS PROVISION SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

14. **CHOICE OF LAW; VENUE; WAIVER OF JURY TRIAL.** All disputes arising out of or in connection with a sale hereunder will be governed by the laws of the state of Wisconsin, USA without regard to conflicts of law rules. Buyer and Seller consent to the jurisdiction of the state and federal courts of Wisconsin, and disputes arising hereunder shall be brought only in such venues. The United Nations Convention on the International Sale of Goods shall not apply to the transactions under these Terms and Conditions. THE PARTIES IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION OR PROCEEDING BROUGHT BY THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR CONNECTED WITH ANY PURCHASE FROM SELLER, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY.

15. **MISCELLANEOUS.** These Terms and Conditions (as effective and posted on Seller's website at the time of shipping) together with Seller's Invoice and Credit Application shall constitute the entire agreement between the parties regarding any sale (the "Agreement"), and no modification may be made, unless in a writing signed by both parties. No variations from this Agreement, whether contained in Buyer's purchase order or elsewhere, shall be binding upon Seller unless expressly agreed in writing by an officer of Seller. Buyer shall not assign this Agreement without Seller's prior written consent. Seller's failure to enforce any provision of the Agreement shall not be a waiver of its right to enforce such provision or any other provision then or thereafter. Any unenforceable provision shall be enforced to the extent it is enforceable. Any provision intended to survive shall survive this Agreement's termination/expirations and the consummation of the transactions contemplated hereunder.

©2022 Midwestern BioAg Holdings, LLC.