

MILK SPECIALTIES GLOBAL



7500 Flying Cloud Drive
Suite 500
Eden Prairie, MN 55344

P 952-942-7310 F 952-942-7611
www.milkspecialtiesglobal.com

AR@milkspecialties.com

INVOICE

0605137

Account #: 122675
Invoice Date: 8/19/24
Terms: CASH IN ADVANCE
Payment Due: 9/18/24
Customer PO: 4500115406
Order #: 0875288- 00
Ship Via: COLLECT

Invoice To:

iHerb Supply Chain Solutions, LLC
301 N. Lake Avenue
Pasadena, CA 91101

Shipped To: 001

iHerb Supply Chain Solution, LLC
15810 Heacock Street
Moreno Valley, CA 92551

Item	Description	Quantity	Price (US \$)	Amount (US \$)
162998	iHERB CALI GOLD WPI CHOC 5LB	4, 756. 000 BG	39. 49000 BG	187, 814. 44
	CGN01203			
	Lot: 2405342	4, 756. 000 BG		

Remit To: Wells Fargo Bank, ABA # - 121 000 248
Acct # - 4121720379
Swift - WFBIUS6S

Total Amount Due (US \$) **187, 814. 44**

For check payments, please remit to one of the following locations :

Milk Specialties Global
PO Box 854351
Minneapolis, MN 55485-4351

Milk Specialties Global
PO Box 847274
Los Angeles, CA 90084-7274

Milk Specialties Company
d/b/a Milk Specialties Global

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale constitute a complete statement of the agreement between Buyer and Seller, which shall not be supplemented or amended except by separate written agreement signed by both parties. Seller expressly rejects terms and conditions additional to or varying from these Terms and Conditions of Sale, and any such additional or varying terms and conditions shall not be binding on Seller unless specifically agreed to in writing by Seller. Seller's acceptance or acknowledgement of Buyer's order or shipping instructions shall not constitute such written agreement. Shipment of products by Seller to Buyer under these Terms and Conditions of Sale shall also constitute Buyer's acceptance of these Terms and Conditions of Sale.
2. Seller warrants (i) that the products supplied to Buyer will conform to the promises and affirmations of fact made in Seller's current technical literature, (ii) that it will convey good title to the products supplied to the Buyer free of all liens and (iii) that the products supplied to the Buyer shall be of merchantable quality. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.
3. Any claim for defect or variance in quality or shortage of quantity shall be made, and Seller shall be notified and given an opportunity to inspect, within five (5) calendar days after products reach their destination, or discovery of such defect or variance, whichever occurs later, but in no event later than thirty (30) days after Buyer's receipt of the invoice. Failure of Buyer to observe this provision or any action by Buyer, which impedes identification of an alleged defect, shall operate as a waiver of Buyer's rights to make any such claim. In the event that it is determined that the warranties made by Seller in Section 2 of these Terms and Conditions of Sale have been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the products supplied by Seller or the return of the purchase price of such products, as determined by Seller in its sole discretion. SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS SUPPLIED TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS AGAINST THE SELLER ARISING UNDER THESE TERMS AND CONDITIONS OR IN ANY WAY RELATED TO SELLER'S SALE OF PRODUCTS TO BUYER, INCLUDING DISPUTES RELATED TO PRICING OR PAYMENT, MUST BE MADE WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE. FAILURE TO BRING CLAIMS WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE SHALL BE DEEMED A WAIVER BY BUYER OF ALL CLAIMS ARISING UNDER THIS AGREEMENT.
4. Delivery and shipment dates indicated on any of Seller's documents are estimated but not guaranteed and Seller will not be liable for any delay in delivery. Unless otherwise consented to in writing by Seller, all shipments are made F.O.B. shipping point, and any price which includes freight is quoted solely for Buyer's convenience and is subject to adjustment to the extent of any increase or decrease in transportation charges.
5. Unless otherwise waived in writing by Seller, Seller reserves the right to require payment in cash before shipment of any of the products. Risk of loss and title to the products shall pass to Buyer upon delivery by Seller to the carrier.
6. If the credit of Buyer shall at any time, in the sole judgement of Seller, become impaired, Seller may at, its option, and without incurring any liability therefor, divert or prevent the discharge of product shipments en route to Buyer and cancel the unfilled portion of the contract, or require Buyer to give such security as Seller may specify to ensure payment or require payment in advance before making any further shipment. All costs and expenses incurred by Seller as a result of its exercise of any right or option under this Section shall be for the account of Buyer.
7. If the products supplied to Buyer are governed by the Federal Food, Drug and Cosmetic Act (the "Act"), Seller guarantees that on the delivery date such products will not be: (i) adulterated or misbranded within the meaning of the Act, as amended; and (ii) an article which may not, under the provisions of the Act, be introduced into interstate commerce.
8. Buyer shall pay the list price for the products unless the Seller otherwise agrees. Invoices are due 30 days from the date of the invoice. Interest will be charged on unpaid balances at the rate of 1.5% per month, but not to exceed the maximum rate allowed by law, beginning 30 days after receipt of invoice.
9. Once Seller accepts or otherwise acknowledges Buyer's order, Buyer shall be obligated to complete its purchase stated in the order and may not cancel its order for any reason.
10. The sale of products to Buyer shall be governed by and construed in accordance with the laws of the State of Minnesota (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters. Buyer and Seller irrevocably consent to the exclusive jurisdiction of the State and Federal courts having jurisdiction over Hennepin County, Minnesota, and the courts to which an appeal therefrom may be taken, for any matter relating to the sale of products to Buyer and waive any contention that any such court is an improper venue for such matters. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller under these terms and conditions shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions of this Agreement shall not affect the validity of the remaining terms or provisions, and these terms and conditions shall be construed as if such invalid terms or provisions had been omitted. Seller shall not be in default of its obligations with respect to the sale of the products to Buyer to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, wars or military conflicts, epidemics and pandemics, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the continuation of such event and Seller shall have no liability to Buyer for any such delay in supply occasioned by such suspension or reduction.
11. If any term or provision of these Terms and Conditions of Sale is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions of Sale or invalidate or render unenforceable such term or provision in any other jurisdiction.

Milk Specialties Company
d/b/a Milk Specialties Global

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale constitute a complete statement of the agreement between Buyer and Seller, which shall not be supplemented or amended except by separate written agreement signed by both parties. Seller expressly rejects terms and conditions additional to or varying from these Terms and Conditions of Sale, and any such additional or varying terms and conditions shall not be binding on Seller unless specifically agreed to in writing by Seller. Seller's acceptance or acknowledgement of Buyer's order or shipping instructions shall not constitute such written agreement. Shipment of products by Seller to Buyer under these Terms and Conditions of Sale shall also constitute Buyer's acceptance of these Terms and Conditions of Sale.
2. Seller warrants (i) that the products supplied to Buyer will conform to the promises and affirmations of fact made in Seller's current technical literature, (ii) that it will convey good title to the products supplied to the Buyer free of all liens and (iii) that the products supplied to the Buyer shall be of merchantable quality. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.
3. Any claim for defect or variance in quality or shortage of quantity shall be made, and Seller shall be notified and given an opportunity to inspect, within five (5) calendar days after products reach their destination, or discovery of such defect or variance, whichever occurs later, but in no event later than thirty (30) days after Buyer's receipt of the invoice. Failure of Buyer to observe this provision or any action by Buyer, which impedes identification of an alleged defect, shall operate as a waiver of Buyer's rights to make any such claim. In the event that it is determined that the warranties made by Seller in Section 2 of these Terms and Conditions of Sale have been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the products supplied by Seller or the return of the purchase price of such products, as determined by Seller in its sole discretion. SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS SUPPLIED TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS AGAINST THE SELLER ARISING UNDER THESE TERMS AND CONDITIONS OR IN ANY WAY RELATED TO SELLER'S SALE OF PRODUCTS TO BUYER, INCLUDING DISPUTES RELATED TO PRICING OR PAYMENT, MUST BE MADE WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE. FAILURE TO BRING CLAIMS WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE SHALL BE DEEMED A WAIVER BY BUYER OF ALL CLAIMS ARISING UNDER THIS AGREEMENT.
4. Delivery and shipment dates indicated on any of Seller's documents are estimated but not guaranteed and Seller will not be liable for any delay in delivery. Unless otherwise consented to in writing by Seller, all shipments are made F.O.B. shipping point, and any price which includes freight is quoted solely for Buyer's convenience and is subject to adjustment to the extent of any increase or decrease in transportation charges.
5. Unless otherwise waived in writing by Seller, Seller reserves the right to require payment in cash before shipment of any of the products. Risk of loss and title to the products shall pass to Buyer upon delivery by Seller to the carrier.
6. If the credit of Buyer shall at any time, in the sole judgement of Seller, become impaired, Seller may at, its option, and without incurring any liability therefor, divert or prevent the discharge of product shipments en route to Buyer and cancel the unfilled portion of the contract, or require Buyer to give such security as Seller may specify to ensure payment or require payment in advance before making any further shipment. All costs and expenses incurred by Seller as a result of its exercise of any right or option under this Section shall be for the account of Buyer.
7. If the products supplied to Buyer are governed by the Federal Food, Drug and Cosmetic Act (the "Act"), Seller guarantees that on the delivery date such products will not be: (i) adulterated or misbranded within the meaning of the Act, as amended; and (ii) an article which may not, under the provisions of the Act, be introduced into interstate commerce.
8. Buyer shall pay the list price for the products unless the Seller otherwise agrees. Invoices are due 30 days from the date of the invoice. Interest will be charged on unpaid balances at the rate of 1.5% per month, but not to exceed the maximum rate allowed by law, beginning 30 days after receipt of invoice.
9. Once Seller accepts or otherwise acknowledges Buyer's order, Buyer shall be obligated to complete its purchase stated in the order and may not cancel its order for any reason.
10. The sale of products to Buyer shall be governed by and construed in accordance with the laws of the State of Minnesota (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters. Buyer and Seller irrevocably consent to the exclusive jurisdiction of the State and Federal courts having jurisdiction over Hennepin County, Minnesota, and the courts to which an appeal therefrom may be taken, for any matter relating to the sale of products to Buyer and waive any contention that any such court is an improper venue for such matters. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller under these terms and conditions shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions of this Agreement shall not affect the validity of the remaining terms or provisions, and these terms and conditions shall be construed as if such invalid terms or provisions had been omitted. Seller shall not be in default of its obligations with respect to the sale of the products to Buyer to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, wars or military conflicts, epidemics and pandemics, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the continuation of such event and Seller shall have no liability to Buyer for any such delay in supply occasioned by such suspension or reduction.
11. If any term or provision of these Terms and Conditions of Sale is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions of Sale or invalidate or render unenforceable such term or provision in any other jurisdiction.

Milk Specialties Company
d/b/a Milk Specialties Global

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale constitute a complete statement of the agreement between Buyer and Seller, which shall not be supplemented or amended except by separate written agreement signed by both parties. Seller expressly rejects terms and conditions additional to or varying from these Terms and Conditions of Sale, and any such additional or varying terms and conditions shall not be binding on Seller unless specifically agreed to in writing by Seller. Seller's acceptance or acknowledgement of Buyer's order or shipping instructions shall not constitute such written agreement. Shipment of products by Seller to Buyer under these Terms and Conditions of Sale shall also constitute Buyer's acceptance of these Terms and Conditions of Sale.
2. Seller warrants (i) that the products supplied to Buyer will conform to the promises and affirmations of fact made in Seller's current technical literature, (ii) that it will convey good title to the products supplied to the Buyer free of all liens and (iii) that the products supplied to the Buyer shall be of merchantable quality. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.
3. Any claim for defect or variance in quality or shortage of quantity shall be made, and Seller shall be notified and given an opportunity to inspect, within five (5) calendar days after products reach their destination, or discovery of such defect or variance, whichever occurs later, but in no event later than thirty (30) days after Buyer's receipt of the invoice. Failure of Buyer to observe this provision or any action by Buyer, which impedes identification of an alleged defect, shall operate as a waiver of Buyer's rights to make any such claim. In the event that it is determined that the warranties made by Seller in Section 2 of these Terms and Conditions of Sale have been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the products supplied by Seller or the return of the purchase price of such products, as determined by Seller in its sole discretion. SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS SUPPLIED TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS AGAINST THE SELLER ARISING UNDER THESE TERMS AND CONDITIONS OR IN ANY WAY RELATED TO SELLER'S SALE OF PRODUCTS TO BUYER, INCLUDING DISPUTES RELATED TO PRICING OR PAYMENT, MUST BE MADE WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE. FAILURE TO BRING CLAIMS WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE SHALL BE DEEMED A WAIVER BY BUYER OF ALL CLAIMS ARISING UNDER THIS AGREEMENT.
4. Delivery and shipment dates indicated on any of Seller's documents are estimated but not guaranteed and Seller will not be liable for any delay in delivery. Unless otherwise consented to in writing by Seller, all shipments are made F.O.B. shipping point, and any price which includes freight is quoted solely for Buyer's convenience and is subject to adjustment to the extent of any increase or decrease in transportation charges.
5. Unless otherwise waived in writing by Seller, Seller reserves the right to require payment in cash before shipment of any of the products. Risk of loss and title to the products shall pass to Buyer upon delivery by Seller to the carrier.
6. If the credit of Buyer shall at any time, in the sole judgement of Seller, become impaired, Seller may at, its option, and without incurring any liability therefor, divert or prevent the discharge of product shipments en route to Buyer and cancel the unfilled portion of the contract, or require Buyer to give such security as Seller may specify to ensure payment or require payment in advance before making any further shipment. All costs and expenses incurred by Seller as a result of its exercise of any right or option under this Section shall be for the account of Buyer.
7. If the products supplied to Buyer are governed by the Federal Food, Drug and Cosmetic Act (the "Act"), Seller guarantees that on the delivery date such products will not be: (i) adulterated or misbranded within the meaning of the Act, as amended; and (ii) an article which may not, under the provisions of the Act, be introduced into interstate commerce.
8. Buyer shall pay the list price for the products unless the Seller otherwise agrees. Invoices are due 30 days from the date of the invoice. Interest will be charged on unpaid balances at the rate of 1.5% per month, but not to exceed the maximum rate allowed by law, beginning 30 days after receipt of invoice.
9. Once Seller accepts or otherwise acknowledges Buyer's order, Buyer shall be obligated to complete its purchase stated in the order and may not cancel its order for any reason.
10. The sale of products to Buyer shall be governed by and construed in accordance with the laws of the State of Minnesota (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters. Buyer and Seller irrevocably consent to the exclusive jurisdiction of the State and Federal courts having jurisdiction over Hennepin County, Minnesota, and the courts to which an appeal therefrom may be taken, for any matter relating to the sale of products to Buyer and waive any contention that any such court is an improper venue for such matters. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller under these terms and conditions shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions of this Agreement shall not affect the validity of the remaining terms or provisions, and these terms and conditions shall be construed as if such invalid terms or provisions had been omitted. Seller shall not be in default of its obligations with respect to the sale of the products to Buyer to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, wars or military conflicts, epidemics and pandemics, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the continuation of such event and Seller shall have no liability to Buyer for any such delay in supply occasioned by such suspension or reduction.
11. If any term or provision of these Terms and Conditions of Sale is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions of Sale or invalidate or render unenforceable such term or provision in any other jurisdiction.

Milk Specialties Company
d/b/a Milk Specialties Global

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale constitute a complete statement of the agreement between Buyer and Seller, which shall not be supplemented or amended except by separate written agreement signed by both parties. Seller expressly rejects terms and conditions additional to or varying from these Terms and Conditions of Sale, and any such additional or varying terms and conditions shall not be binding on Seller unless specifically agreed to in writing by Seller. Seller's acceptance or acknowledgement of Buyer's order or shipping instructions shall not constitute such written agreement. Shipment of products by Seller to Buyer under these Terms and Conditions of Sale shall also constitute Buyer's acceptance of these Terms and Conditions of Sale.
2. Seller warrants (i) that the products supplied to Buyer will conform to the promises and affirmations of fact made in Seller's current technical literature, (ii) that it will convey good title to the products supplied to the Buyer free of all liens and (iii) that the products supplied to the Buyer shall be of merchantable quality. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES. EXCEPT FOR THE FOREGOING WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.
3. Any claim for defect or variance in quality or shortage of quantity shall be made, and Seller shall be notified and given an opportunity to inspect, within five (5) calendar days after products reach their destination, or discovery of such defect or variance, whichever occurs later, but in no event later than thirty (30) days after Buyer's receipt of the invoice. Failure of Buyer to observe this provision or any action by Buyer, which impedes identification of an alleged defect, shall operate as a waiver of Buyer's rights to make any such claim. In the event that it is determined that the warranties made by Seller in Section 2 of these Terms and Conditions of Sale have been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the products supplied by Seller or the return of the purchase price of such products, as determined by Seller in its sole discretion. SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS SUPPLIED TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS AGAINST THE SELLER ARISING UNDER THESE TERMS AND CONDITIONS OR IN ANY WAY RELATED TO SELLER'S SALE OF PRODUCTS TO BUYER, INCLUDING DISPUTES RELATED TO PRICING OR PAYMENT, MUST BE MADE WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE. FAILURE TO BRING CLAIMS WITHIN THIRTY DAYS OF BUYER'S RECEIPT OF THE INVOICE SHALL BE DEEMED A WAIVER BY BUYER OF ALL CLAIMS ARISING UNDER THIS AGREEMENT.
4. Delivery and shipment dates indicated on any of Seller's documents are estimated but not guaranteed and Seller will not be liable for any delay in delivery. Unless otherwise consented to in writing by Seller, all shipments are made F.O.B. shipping point, and any price which includes freight is quoted solely for Buyer's convenience and is subject to adjustment to the extent of any increase or decrease in transportation charges.
5. Unless otherwise waived in writing by Seller, Seller reserves the right to require payment in cash before shipment of any of the products. Risk of loss and title to the products shall pass to Buyer upon delivery by Seller to the carrier.
6. If the credit of Buyer shall at any time, in the sole judgement of Seller, become impaired, Seller may at, its option, and without incurring any liability therefor, divert or prevent the discharge of product shipments en route to Buyer and cancel the unfilled portion of the contract, or require Buyer to give such security as Seller may specify to ensure payment or require payment in advance before making any further shipment. All costs and expenses incurred by Seller as a result of its exercise of any right or option under this Section shall be for the account of Buyer.
7. If the products supplied to Buyer are governed by the Federal Food, Drug and Cosmetic Act (the "Act"), Seller guarantees that on the delivery date such products will not be: (i) adulterated or misbranded within the meaning of the Act, as amended; and (ii) an article which may not, under the provisions of the Act, be introduced into interstate commerce.
8. Buyer shall pay the list price for the products unless the Seller otherwise agrees. Invoices are due 30 days from the date of the invoice. Interest will be charged on unpaid balances at the rate of 1.5% per month, but not to exceed the maximum rate allowed by law, beginning 30 days after receipt of invoice.
9. Once Seller accepts or otherwise acknowledges Buyer's order, Buyer shall be obligated to complete its purchase stated in the order and may not cancel its order for any reason.
10. The sale of products to Buyer shall be governed by and construed in accordance with the laws of the State of Minnesota (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters. Buyer and Seller irrevocably consent to the exclusive jurisdiction of the State and Federal courts having jurisdiction over Hennepin County, Minnesota, and the courts to which an appeal therefrom may be taken, for any matter relating to the sale of products to Buyer and waive any contention that any such court is an improper venue for such matters. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller under these terms and conditions shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions of this Agreement shall not affect the validity of the remaining terms or provisions, and these terms and conditions shall be construed as if such invalid terms or provisions had been omitted. Seller shall not be in default of its obligations with respect to the sale of the products to Buyer to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, wars or military conflicts, epidemics and pandemics, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the continuation of such event and Seller shall have no liability to Buyer for any such delay in supply occasioned by such suspension or reduction.
11. If any term or provision of these Terms and Conditions of Sale is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions of Sale or invalidate or render unenforceable such term or provision in any other jurisdiction.