

## GENERAL TERMS AND CONDITIONS OF PURCHASE OF PRODALIM USA INC.

### 1. DEFINITIONS.

- “**Prodalim**” means Prodalim USA Inc., a Florida corporation or any of its subsidiaries or Affiliates.
- “**Supplier**” means the supplier named in the Order and/or Agreement, as the case may be.
- “**Products**” mean, among others, the perishable and non-perishable ingredients, raw material, food and/or beverages and/or similar and related products, in each case including by-products, that Prodalim purchase or may purchase from Supplier as described in the Order and/or Agreement, as the case may be.
- “**Agreement**” means any Order from Prodalim to the Supplier and these PGT&C (as defined below), together with any other written agreement between Prodalim and Supplier, including any amendments thereto.
- “**Order**” means the written purchase order or any other written order issued by Prodalim for the purchase of Products from Supplier, including any amendments thereto.
- “**Affiliate**” means any company within the Prodalim Group, including, without limitation, (i) any parent company of Prodalim USA Inc., (ii) any subsidiary of Prodalim USA Inc., (iii) any affiliate of Prodalim USA Inc., or (iv) any partnership or other entity that is owned or controlled by Prodalim USA Inc. or any entity that owns or controls Prodalim USA Inc., whether currently an affiliate, subsidiary or parent or subsequently becoming an affiliate, subsidiary or parent.
- “**PGT&C**” means the following General Terms and Conditions of Purchase of Prodalim.

### 2. PGT&C.

These PGT&C are an integral part of and regulates each Order and/or Agreement that Prodalim or any of its Affiliates issues, and/or to which Prodalim or any of its Affiliates is a party.

### 3. ACCEPTANCE OF PGT&C.

Since the Supplier has become aware of the existence of these PGT&C and has had the opportunity to receive a copy (or download a copy in electronic format) of these PGT&C, the Supplier hereby expressly ascertains, acknowledges, agrees and accepts the PGT&C. Without derogating from the foregoing, shipment of Products by Supplier constitutes acceptance of PGT&C and the terms and conditions set forth in any Order and/or Agreement, as the case may be. In any case, Prodalim's offer to purchase is always subject to Supplier's acceptance of PGT&C. Supplier's execution of an Order and/or an Agreement constitutes acceptance of PGT&C, and precludes Supplier's objection to any such terms and conditions and/or Supplier's inclusion of any different or additional terms or conditions except the ones expressly accepted by Prodalim in written amendment and signed by both Prodalim and Supplier before any such shipment. By accepting an Order and/or Agreement or by shipping Products in response to an Order and/or Agreement, Supplier agrees that Prodalim is not bound by and shall never be held bound by any general terms and conditions of Supplier that could be attached to any written acknowledgment, invoice or otherwise. All sections of the governing law that expressly or implicitly protect Prodalim and are not in conflict with any term hereunder are hereby incorporated by reference. These PGT&C, the Agreement(s) and the Order(s) contain all of the terms of the commercial relation between Supplier and Prodalim and supersede all prior oral or written representations, agreements and other relation between Supplier and Prodalim, and each of them may be only amended in writing signed by both Prodalim and the Supplier. In case of conflict between a provision of an Order or an Agreement and a provision of these PGT&C, the provision of the Order or of the Agreement, as the case may be, shall prevail. The issuance of an Order by an Affiliate shall constitute only such Affiliate's agreement. Therefore: (1) only the said Affiliate shall be bound by the terms of that Order and said Affiliate shall be the only beneficiary of all provisions of that Order; and (2) neither Prodalim nor any other Affiliate other than the specific Affiliate that issued the Order shall have any obligation or

responsibility to Supplier with respect to the Products contemplated by such Order, including, but not limited to, the payment for the Products.

#### 4. ORDER CANCELLATION.

PRODALIM RESERVES THE RIGHT TO CANCEL AN ORDER (OR ANY PART THEREOF) WITHOUT PENALTY AND WITHOUT ANY LIABILITY AND COMPENSATION, BY WRITTEN NOTICE OF AT LEAST 5 DAYS BEFORE THE DELIVERY DATE (AND AFTER SUCH DATE IF PRODALIM HAS REASON TO REQUEST ADEQUATE ASSURANCE OF DUE PERFORMANCE AND THE SAID ASSURANCE (TO THE SATISFACTION OF PRODALIM) IS NOT FORTHCOMING WITHIN 10 DAYS AFTER PRODALIM'S REQUEST). In the case of any delayed delivery of the ordered Products, Prodalim may cancel the unreceived part of an Order at any time without penalty and without any liability and compensation. If Supplier can fulfil its delivery obligation only by premium freight, Supplier will prepay such premium freight. If Supplier ships the Products before the shipment date or after an Order cancellation, Prodalim may, in its sole discretion, refuse the shipment, or accept such Products that shall be deemed non-conforming Products, according to Section 6 of these PGT&C.

#### 5. PERFORMANCE.

Supplier shall duly perform Prodalim's internal rules and regulations, as shall be adopted by Prodalim from time to time ("**Rules**"). Consequently, the Products shall be produced, labelled, packaged, tested, delivered and sold in full compliance with the said Rules that the Supplier declares and acknowledges to ascertain and accept, as amended and/or restated from time to time. Prodalim strives to maintain quality and uniformity throughout the Rules and considers them to be of critical importance to the continued success of Prodalim.

Supplier shall handover to Prodalim all necessary certificates under applicable Food and Drug Administration regulations and Prodalim supplier's approval checklist. In the case of non-compliance of the said Rules, laws and/or regulations, Prodalim reserves the right to stop fulfilment of any Agreement and/or Order (or any part thereof) without any liability and compensation, at once until the compliance can be re-established. Depending on non-compliant severity, Prodalim may terminate the Agreement(s) with the non-compliant Supplier and/or any Order(s) issued thereunder (or any part thereof) without any liability and compensation. In any case, Products that do not fully comply with the said Rules, laws and/or regulations shall be deemed to be non-conforming Products, according to Section 6 of these PGT&C.

#### 6. NON-CONFORMING - UNORDERED - UNSAFE - UNFIT PRODUCTS.

Non-conforming and unordered Products. Without limitation of different rights and remedies available, Prodalim may, at its sole discretion, (1) return to Supplier, at Supplier's risk and expense, unordered Products and/or Products that do not conform to the PGT&C and the Agreement(s) and/or Order(s), including shipping instructions and the agreed dates for shipment and delivery ("**non-conforming Products**"). In case of delivery of non-conforming Products, Prodalim may require Supplier either to refund the price or promptly repair/replace the non-conforming Products, at Supplier's risk and expense; (2) retain the non-conforming Products and set off losses and reasonable costs (such as of care and custody, transportation, inspection, receipt, recall etc.) against any amount due to the Supplier; or (3) repair or replace the non-conforming Products by services from a third party, and charge Supplier with the costs of such services. In case of delivery of unordered Products, Prodalim will hold such excess Products at Supplier's expense and risk for 10 days and await Supplier's instructions for disposition of the Products. If Supplier does not provide Prodalim instructions for disposition of such excess Products within the aforementioned 10 days period, Prodalim may use or dispose of such excess Products as it pleases and charge the cost of such disposition, if any, to Supplier. In no event shall Prodalim pay or be under any obligation to pay for excess Products used or disposed.

Unsafe and unfit Products. In case of delivery of unsafe and/or unfit Products, upon declaration of a governmental agency that any of the Products or any of the ingredient of the Products, or any material included in any packaging or if Prodalim, at any time, believes in good faith that any of the Products or any

such ingredient, material or packaging (1) is adulterated or misbranded under the applicable law, rules or regulations, (2) fails to conform to an applicable standard or regulation issued, (3) doesn't conform with an applicable consumer product safety standard, (4) has a reasonable probability of causing health consequences, or (5) is otherwise unsafe or unfit for the intended use of the Products; in such case, without limitations of different rights and available remedies, (a) Prodalim or Supplier, as the case may be, shall immediately inform the other party by written notice about any such declaration and shall furnish copies of the said declaration and of all relevant documents; and (b) Supplier shall stop using the ingredient or material in the Products or in the packaging, as the case may be. In any case, if the reason for the declaration is Supplier's failure to produce the Products in accordance with Prodalim's specifications, Prodalim may refuse the Products and may terminate the Agreement (in whole or in part), without liability, by giving a written notice to Supplier, which shall be effective immediately upon its delivery.

## **7. BACKORDERS.**

Suppliers shall not backorder any Products subject to an Order and/or Agreement without Prodalim's prior written consent. Supplier must pay all shipping costs related to a backorder. All backorders should receive the best pricing at either the time of the Agreement and/or Order or at the time of the shipment. These PGT&C apply also to Products on backorder.

## **8. RIGHT OF TEST AND INSPECTION.**

Prodalim will have the right to test and/or inspect the Products and reject any non-conforming Products within 30 business days of receipt of the Products. The inspection will not affect Prodalim's right to revoke acceptance or pursue other remedies if non-conformities are discovered later, even if the discovered non-conformity/ies could have been discovered upon inspection. In the case that Prodalim rejects Products as non-conforming, the quantities under the Order will automatically be reduced unless Prodalim otherwise notifies to Supplier. Supplier shall not replace quantities rejected without a new Order from Prodalim. Non-conforming Products will be held by Prodalim at the disposal of Supplier at Supplier's risk and cost. Payment for non-conforming Products shall not constitute an acceptance thereof or a limit to Prodalim's right to any available remedy, and shall not relieve Supplier's responsibility for defects (including apparent defects). The Supplier shall perform reasonable amounts of testing and inspection with respect to each shipment of the Products to ensure the Products comply with the requirements of the Order and/or Agreement, as applicable. Testing methods and procedures shall conform to the standards that Prodalim provides to Supplier and any applicable law or regulation of any competent governmental agency. Upon Prodalim's first request, Supplier shall immediately communicate to Prodalim a copy of the results of each test and/or inspection, and a certificate of analysis.

## **9. REPRESENTATIONS, WARRANTIES AND GUARANTEES.**

Supplier agrees, represents and warrants to Prodalim, its customers and assigns that from the date of the Order and/or Agreement, as applicable, the following declarations are correct and true: (1) Supplier has all necessary experience, qualifications, expertise, licenses, permits and certificates sufficient in all respects to perform its obligations under the Agreement and/or Order, as the case may be in accordance with applicable law, the Order(s)/Agreement(s) and industry best practice (the "**Certifications**"). Said Certifications are valid and effective, and Supplier guarantees that there is no current proceeding or potential proceeding or claim to revoke such Certifications; (2) Supplier is and, at the time of each delivery of the Products will be, solvent; (3) Supplier and/or its agents have not offered/given any reward, fee, gift or tip to any employee of Prodalim; (4) Supplier is and continue to be in compliance with all applicable laws, orders and regulations that prohibit discrimination against any employee because of race, colour, religion, sex, sexual orientation, gender identity, national origin, age, disability or the like; (5) Products shall not be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (6) Products will be produced, packaged, tagged, labeled, packed, shipped and invoiced in compliance with the applicable requirements of federal, state and local laws, regulations, ordinances and administrative orders and rules of the United States, its territories

and all other countries in which Products are produced or delivered; (7) Products shall adhere to all applicable federal, state and local laws, regulations, ordinances and administrative orders and rules of the United States, its territories and all other countries in which Products are produced or delivered; (8) Products shall not use any trade name, trademark, or other intellectual property of Prodalim or any Affiliate, without first obtaining the written consent of Prodalim; (9) Supplier refrains from providing products directly or indirectly to Prodalim's customers at a lower price than the price provided by Supplier to Prodalim for similar products; (10) the prices fixed and agreed on the Order and/or Agreement, as the case may be, are not higher than prices charged to other Supplier's customers for similar quantities and similar conditions; (11) Supplier is not performing the Agreement and/or the Order as an agent for any third party; (12) the Products and all materials furnished in connection with the Products are merchantable, of good material, workmanship and quality, fit for the purposes for which Prodalim intends them and free from defects; (13) the packaging conform to any specifications, standards, criteria, labelling or other requirements agreed in the Order and/or the Agreement, as the case may be, or as otherwise specified or agreed with Prodalim; (14) Products, their manufacture, packaging, labelling, branding and any services provided in connection with the sale of the Products comply with applicable law, regulations and standards. Supplier shall immediately offer to Prodalim copies of documents that Supplier receives from any sources suggesting, implying or indicating that the Products are non-conforming to the above said requirements; (15) Supplier has adequate quality, safety, and security procedures that will assure that the Products will comply with the agreed representations, warranties and guarantees; (16) the manufacture, use, distribution or sale of Products will not violate or infringe any proprietary or intellectual property rights of any person or entity; (17) Supplier will, at all time, comply in all respects with Prodalim's Code of Conduct, as shall be in effect from time to time, which defines the principles and ethical standards for Prodalim's suppliers. Supplier's representations, warranties and guarantees shall be deemed to have been given not only to Prodalim but also to any of Prodalim's customers, Affiliates, its and their successors and assigns and to end-users of the Products. Supplier passes on to Prodalim, Prodalim's customers, Affiliates, its and their successors and assigns and to the end-users of the Products all representations, warranties and guarantees given to Supplier by those from whom Supplier purchased the Products; (18) Supplier is aware of and familiar with the existence and the content of the Foreign Corrupt Practices Act (as amended and/or restated from time to time "FCPA"), and shall be and shall remain in compliance with the FCPA, also with reference to its prohibition against taking corruptive actions/practices with any offer, payment, promise to pay, or authorization of payment of any money, offer, gift, promise to give or authorization of the giving of any value, either directly or indirectly, to government officials, candidates of political parties, or to any other person, while being aware (or should being aware) that all or some portion of such consideration will be offered, given or promised to government officials, candidates of political parties, or any other person, in order to (or which could result in):

- influencing any action, inaction, decision by a government official, candidates of political parties, or any other person in his or her official role;
- inducing a government official, candidate of political parties, or any other person to exert his or her influence to affect any action, inaction or decision; or
- granting an advantage in starting and/or conducting business.

Supplier shall also not take or permit to be taken any actions that would result in a violation of the FCPA by Prodalim, and shall not use any part of payments received from Prodalim for any purpose that could result in a violation of the FCPA. Supplier is not owned/controlled by government officials or candidates of political parties whose payments are regulated by the FCPA, or any other persons who might exert illegal influence on their behalf. Neither Supplier nor any person or entity that directly or indirectly owns 10% or more of the share capital of the Supplier, nor any of its directors or managing members are, and shall not, become persons or entities in relation to which there are restrictions from doing business according to the Office of Foreign Asset Control of the Department of the Treasury or according to Executive Order 13224, dated September 24, 2001, as may be amended and/or restated from time to time.

The above said representations, warranties and guarantees are in addition to any other warranties under these

PGT&C, the Order and/or the Agreement (as the case may be) or under any applicable law and each such representations, warranties and guarantees shall survive Prodalim's payment and/or acceptance and/or inspection of the Products and/or termination of any Order and/or Agreement. Supplier is responsible to offer Prodalim any information that is or could be necessary or helpful to comply with any applicable law and/or regulations concerning the Products. Supplier recognizes and acknowledges that its failure to comply with any of its representations, warranties and/or guarantees under Section 9 of these PGT&C will cause Prodalim material and concrete damage for which there is no adequate remedy at law. Accordingly, Supplier agrees that, in addition to any other rights or remedies that may be available to Prodalim at law, in contract or in equity, Prodalim will be entitled to immediate injunctive relief against any breach or threatened breach of any such representation, warranty and/or guarantee, without the necessity of proving actual damages and without the necessity of posting any bond or making any undertaking in connection therewith.

#### **10. CUSTOMER RETURNS.**

If Prodalim has purchased Products for the purpose of resale and Prodalim's customers return any of the Products to Prodalim in consequence of any alleged defect or non-compliance with these PGT&C and/or the Order and/or the Agreement, as the case may be, then Prodalim may return such Products (or any part thereof) to Supplier as Prodalim shall deem fit and appropriate. Supplier will promptly accept the returned Products, pay all freight, fee, costs for shipping and handling and any other cost or expenses incurred by Prodalim in connection with the foregoing. Supplier shall give Prodalim full credit or cash refund, at Prodalim's sole discretion, for the price of the Products.

#### **11. COUNTRY OF ORIGIN REQUIREMENTS.**

Supplier warrants to Prodalim and declares that it complies (and shall at all times continue to comply) with all state, provincial and local Country of Origin labelling and connected requirements, including those required by the U.S. applicable law and regulations, and will provide to Prodalim all reasonable assistance that the situation requires and all necessary information to enable Prodalim to comply with the Country of Origin requirements related to Supplier's Products. In particular, Supplier will (1) label or include with all Products subject to the Country of Origin requirements all the necessary Country of Origin information that is required to display or maintain; (2) comply with all retention of documents and Product segregation standards required by the Country of Origin requirements and by Prodalim; and (3) provide to Prodalim, at its first request, the results of an audit of the system implemented by Supplier to comply with the Country of Origin requirements performed by a third party acceptable to Prodalim.

#### **12. SHIPMENT AND RISK.**

Supplier shall be responsible for the Products to be professionally packed, including, without limitation, sufficient and suitable packing (including, without limitation, lashing, fenders, etc. as may be deemed appropriate), considering type of goods, destination, possible weather and route, etc. Supplier will be held fully and exclusively liable for any loss or damage not paid by the marine insurer due to such insufficient and/or unsuitability packing.

The following specific delivery terms shall apply to each delivery made by Supplier to Prodalim: (1) Prodalim shall not be charged for packing or transport expenses that shall be paid by Supplier; (2) Supplier shall include with each shipment a document listing each item and quantity separately, as indicated on the Order and/or Agreement, as applicable; (3) Prodalim reserves the right to reject shipment and return Products at Supplier's sole expense if any container and/or any package are not adequate for reshipment and not marked to meet requirements of existing labelling applicable laws, and/or existing weight and measure applicable laws and/or any different applicable legal requirements. Each container and each package shall bear the name of Supplier; and (4) If any governmental registration or approval is required for the Products, such registration or approval shall be obtained by Supplier at Supplier's expense.

Unless Prodalim agrees otherwise in writing, Supplier shall deliver the Products Delivered Duty Paid (DDP),

according to the latest published Incoterms, as amended and/or restated from time to time, always noting that (i) DDP means that Supplier assumes all responsibilities and costs for delivering the Products to the named place of destination; (ii) Supplier must pay both export and import formalities, fees, duties and taxes; and (iii) Supplier is not obligated to insure the Products for pre-carriage or main carriage. If Prodalim manages the freight, its costs shall be deducted from the delivered invoice. If Prodalim takes delivery of all or any part of the Products at Supplier's facility, the risk of loss shall shift to Prodalim only when Prodalim or its shipping agent leaves Supplier's facility after the delivery of the Products. Supplier shall use any mode of shipment, carrier and routing that Prodalim specifies. Delivery shall be made in the quantities and at the times specified by Prodalim to Supplier in writing. If Supplier delivers the Products before the scheduled delivery date, Prodalim may, at Supplier's sole expense and risk, either store them or return them to Supplier. Prodalim's acceptance of an early delivery shall not change the payment terms. Products delivered in excess of the ordered quantities or after the times specified in Prodalim's delivery instructions shall be deemed to be unordered products under Section 6 of these PGT&C. Notwithstanding anything to the contrary in these PGT&C, Order or an Agreement, any and all Products for which Prodalim has already paid to Supplier shall be considered the sole and exclusive property of Prodalim. The Supplier has no right of retention or any other similar right in respect of those Products.

Supplier will provide Prodalim in writing with the Order lead time applicable to the Products and represents that such lead time will meet industry best standards for the same or similar Products. "Order lead time" means the number of days from Order issuance date to the date the Products will be delivered to Prodalim's facility or such other place identified in the Order. Delivery dates, Order lead time and the agreed date for performance of any other obligation of Supplier shall not be extended or excused for any reason, including any reasons beyond Supplier's control. In the event Supplier fails to meet the delivery date, Order lead time and/or the agreed date for performance (together, as the case may be, the "**Infringement**"), then as partial relief for the damages to Prodalim (which remedy shall not be exclusive of any other remedies at law, in contract or in equity), Supplier shall pay as liquidated damages to Prodalim, at Prodalim's option, an amount equal to 0.5 percent (0.5%) of the net value of the Order in respect of which the delivery is late, for each day of delay until actual receipt of the Products by Prodalim (increasing to 0.8 percent (0.8%) for each day of delay after 10 days of delay and until actual receipt of the Products by Prodalim).

Prodalim and the Supplier hereto acknowledge and agree that the liquidated damages under the paragraph above do not constitute penalties and are without prejudice to and in addition to any and all other rights to which Prodalim is entitled, including, without limitation, the right of Prodalim to call a default. Prodalim and the Supplier further acknowledge that (i) liquidated damages payable under the paragraph above are closely and directly related to the Infringement; (ii) Prodalim's right to compensation for any damages dependent on infringements other than the Infringement is always hold firm; (iii) the amount of loss or damages likely to be incurred by Prodalim is incapable or is difficult to precisely estimate; (iv) the amounts specified above bear a reasonable relationship to, and are not plainly disproportionate to, the probable loss likely to be incurred by Prodalim in connection with the Infringement; (v) one of the reasons to reach this agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages dependent on the Infringement; and (vi) Prodalim and the Supplier are sophisticated business parties and have been represented by sophisticated and competent legal counsels and negotiated the Agreement at arm's length.

### **13. PAYMENTS AND PRODALIM'S CLAIMS.**

After receipt of a duly issued invoice and after acceptance of Products by Prodalim, payment shall be made within 15 business days. Prodalim may choose (but shall not be obligated) to pay according to discount terms offered by Supplier. Prodalim's payment of the purchase price does not constitute acceptance of Products. If any payment is due on a non-business day or banking holiday observed in the applicable jurisdiction, the due date shall be extended until the next applicable business day. Supplier shall give Prodalim a written notice of any possible discrepancy in any amount paid by Prodalim within 60 days of such payment. If Supplier fails to give such notice within such period, Supplier shall not thereafter assert any claim for such payment and

Supplier hereby irrevocably and unconditionally waive any such claim. All amounts payable to Supplier will be subject to all Prodalim's claims arising from the Orders and/or Agreements and/or these PGT&C and/or any other reason. Prodalim has the right to set off and deduct against any such amounts all present and future debts of Supplier to Prodalim or its Affiliates. Supplier shall be deemed to have accepted each debit amount or Supplier chargeback within sixty 60 days following receipt of notice of the said debit amount or chargeback, unless Supplier communicates to Prodalim in writing the reason why the deduction is not correct and provides sufficient documentation of the said reason.

#### **14. TAXES.**

Unless Prodalim agrees otherwise in writing, Prodalim shall not be required to pay any sales, use or other taxes (whether provincial, state, or local) (collectively, "**Taxes**"), assessments, fees or duties arising as a result of Prodalim's purchase from Supplier and Supplier shall be solely responsible and liable for paying any such Taxes. In the case that said Taxes come into effect later than the date of the Order, any such Taxes shall be paid by the party upon which the legal incidence of the Tax is imposed. If Prodalim agrees in writing to pay any Tax, then the amount of the Tax shall be separately stated on Supplier's invoice.

#### **15. INDEMNIFICATION.**

Supplier will indemnify and hold harmless Prodalim, its Affiliates and their directors, shareholders, officers, employees, consultants, agents, contractors, representatives successors and assigns from any claims, actions, demands, liabilities, losses, amounts paid in settlement, and any other expenses, costs or fees (including reasonable counsel and attorney's fees, disbursement costs of investigation) including, without limitation, liabilities arising from any actual or alleged injury to or death of any person, damage to any property, and any other damage or loss, by whomsoever suffered, including Supplier's or Prodalim's agents or employees, claimed to result, directly or indirectly, from (1) the Products, including Prodalim's use, shipment, storage, delivery, sale, or other handling of the Products, and/or (2) Supplier's actual or alleged breach of any of the representations, warranties, guarantees or other terms and conditions contained herein, in the Order(s) and/or in the Agreement(s), as the case may be, except if such liability is caused by the sole gross negligence or wilful misconduct of Prodalim. In addition to the foregoing, if any of the Products or any part thereof is alleged to constitute infringement of a right of a third party, Supplier, at its own expense, will either (1) procure for Prodalim, its Affiliates and their successors, assigns, and customers the right to continue using such Products, (2) replace the Products with non-infringing items, or (3) in further alternative to option (1) and (2) above, refund the purchase price for the Products and pay all related expenses and costs.

#### **16. PRICING.**

All pricing is based on Prodalim's purchase Order issuance date. The price to be paid by Prodalim stated on any Order or Agreement, as applicable, shall not be increased unless specifically authorized in writing by Prodalim. Supplier shall ensure maximum accuracy of all invoices submitted. Any marketing, purchasing volume or related programs offered by Supplier to Prodalim on one or more Products will be applied at the same respective rates to any other Products that Prodalim purchases from Supplier that are the same or similar to the original Product. Notwithstanding anything to the contrary in these PGT&C, an applicable Agreement and/or applicable Order, Prodalim and the Supplier hereby acknowledge and agree that tariffs related to Products procured under any Order or Agreement are subject to fluctuations and hereby agree that any fluctuation which results in a reduction on tariffs related to the Products under an applicable Order or Agreement will be passed through to Prodalim as a reduction in the price under said applicable Order or Agreement.

#### **17. FORCE MAJEURE.**

Prodalim and the Supplier agree that the latter is excused from non-performance or delays in delivery caused by acts of God, unforeseeable occurrences or other force Majeure events, but Prodalim and the Supplier also agree that the latter is not excused by unexpected difficulty or commercial impracticality of any degree. Prodalim reserves the right to reject any shipment of any order of goods from Supplier and shall have no

obligation to pay for the rejected shipment in the event that Prodalim's business or operations are discontinued in whole or in part by reason of fire, flood, earthquake, war, civil disorder or any other act or event beyond Prodalim's reasonable control.

#### **18. TERMINATION CLAUSE.**

If at any time (i) Supplier defaults in the performance of any of Supplier's obligations to Prodalim under the Agreement or under the Order or under these PGT&C or under any other agreement between Supplier and Prodalim (in whatever form) and Supplier fails to cure the default within a reasonable time after Prodalim provides notice of the default to Supplier; (ii) Supplier refuses to perform the Agreement or the Order; or (iii) any warranty or representation that Supplier has made to Prodalim in consequence of the signature of the Agreement or the Order, as the case may be, is false or misleading (Sections 9, 11 and 12); then by written notice to the Supplier with immediate effect, Prodalim may terminate the Agreement and/or any subsequent Order, in whole or part, without liability, and Supplier shall immediately pay to Prodalim all damages and costs that Prodalim incurred or may incur as a result of the termination and as a result of the event or circumstance on the basis of which Prodalim terminated the Agreement or the Order, as the case may be. Furthermore, Prodalim may immediately terminate the Agreement and/or any subsequent Order without liability in the event of the occurrence of any of the following events or any other comparable event: (a) insolvency of the Supplier; (b) filing of a voluntary petition in bankruptcy by Supplier; (c) filing of an involuntary petition in bankruptcy against Supplier.

#### **19. CONFIDENTIALITY.**

Supplier agrees that any technical information disclosed to Prodalim in connection with the Products covered by any Order and/or Agreement is not confidential and Supplier will not assert any claim against Prodalim with respect to that information. Any information disclosed by Prodalim to Supplier is confidential and Supplier agrees to keep it in strict confidence and not to use or disclose any such information without the prior written consent of Prodalim which may be withheld at any time and for any reason. Supplier shall not disclose or use or permit to be disclosed or used by any third party (including any of Supplier's suppliers and employees) any information, standards, performance criteria or other requirements for the Products or any information concerning Prodalim's business, operations or activities, including, without limitation, information concerning Prodalim's present or proposed products, product developments, plans, strategies, finances, know-how, sales, customers, suppliers, recipes, Prodalim's marketing or sales techniques, or the existence of the Agreement or the Order, provided, however, that Supplier may disclose confidential information (a) to the extent necessary to enforce its rights under the Agreement or to defend a claim arising under the Agreement; and (b) as required by applicable law, in such event the Supplier shall provide Prodalim with a written notice setting forth the nature of the required disclosure prior to the disclosure thereof and in any event the Supplier will furnish only that portion of the confidential information which is legally required to disclose. Further, the Supplier agrees not to make any copies of the confidential information on any type of media, without the prior express written permission of Prodalim.

#### **20. INSURANCE.**

Supplier shall maintain in effect, at its own expense a commercial general liability insurance coverage that will protect Supplier and Prodalim from any and all claims and liabilities for property damage, personal injury, death or economic damage, to any person, that arises from the Supplier's Products, their use or consumption or the performance of the services or any activities connected with the Products. The limits of the said liability insurance coverage must be agreed with Prodalim and accepted by Prodalim.

#### **21. EXPORT AND IMPORT REQUIREMENTS.**

Supplier shall prepare, maintain and, to the extent that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from



which the Products will be exported and each country into which they will be imported, and Supplier shall comply with all other applicable customs requirements. Upon Prodalim's first request, Supplier shall immediately furnish to Prodalim copies of that information and documentation. Supplier is solely responsible for complying with all technical compliance and Country of Origin requirements of each country into which the Products are to be imported.

## **22. SEVERABILITY.**

If any provision of the Agreement, the Order or these PGT&C, as the case may be, is deemed to be invalid or unenforceable, then (i) all other provisions of the Agreement, the Order or these PGT&C, as the case may be, shall remain in full force and effect; and (ii) such provision shall be modified to the minimum extent necessary to cure such defect and make such provision valid and enforceable.

## **23. REMEDIES.**

The remedies in these PGT&C shall be deemed to be in addition to any other remedies allowed to Prodalim under any applicable law. The failure of either party to require performance by the other party of any provision of the Order and/or Agreement and/or these PGT&C shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of either party of a breach of any provision of the Agreement and/or Order and/or these PGT&C constitute a waiver of any succeeding breach of the same or any other provision.

## **24. ASSIGNMENT.**

Supplier shall not assign any of its rights or delegate, subcontract or assign any of its duties under the Agreement and/or Order without Prodalim's prior written consent, which may be withheld at any time and for any reason. Prodalim's consent to Supplier's delegation, subcontracting or assignment of any obligation of Supplier under the Agreement and/or Order, as the case may be, shall not relieve Supplier of its responsibility or liability for performance of the Agreement and/or Order, as the case may be.

## **25. GOVERNING LAW AND JURISDICTION.**

The validity, interpretation, and performance of these PGT&C, the Agreement(s) and/or subsequent Order(s) shall be governed in all respects by the laws of the State of Florida, without giving effect to conflicts of law principles that would result in the application of the substantive laws of another jurisdiction. Prodalim and the Supplier hereby agree that any action, proceeding or claim against each other arising out of or relating in any way to these PGT&C, Agreement(s) and/or subsequent Order(s) shall be brought and enforced in the courts of Orange County, Florida, and they irrevocably submit to such jurisdiction, which jurisdiction shall be exclusive. The stipulations specified in the Convention of International Sale of Goods of 11 April 1980 are not applicable.

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