

# POET Nutrition Purchase Contract Terms & Conditions

**1. Governing Terms.** These Terms and Conditions of Purchase and the Contract for Purchase to which they relate (together, these "Terms") govern the purchase by POET Nutrition, LLC ("POET") of the products described in the Contract for Purchase (the "Products") from Seller, unless otherwise agreed in a written agreement signed by POET. POET offers to purchase Products from Seller solely pursuant to these Terms and any accompanying Contract for Purchase issued by POET to Seller, and Seller's acceptance is expressly limited to these Terms and the Contract for Purchase. If Seller has offered Products to POET, POET's acceptance of such offer is expressly conditioned on Seller's assent to these Terms. Any additional or different terms proposed by Seller in any offer, acceptance or confirmation are requests for material alterations of these Terms and are rejected by POET. No course of dealing, course of performance or usage of trade will supplement or explain these Terms.

**2. Trade Rules.** Except to the extent contradicted by these Terms, the purchase of Products by POET is made under, and is subject to, the trade rules identified in the Confirmation of Terms (the "Trade Rules"), as amended from time to time, which are incorporated herein by this reference. In the event of a conflict between these Terms and the Trade Rules, these Terms will govern.

**3. Price.** The price of the Products will be the price stated by POET in its Contract for Purchase, unless otherwise agreed in writing by POET. Seller warrants that the price is complete, and that no additional charges of any type will be added without POET's written consent, including without limitation charges for shipping, packaging, labeling, storage, insurance, taxes, brokerage fees, customs duties or surcharges of any type. Allowances, adjustments and discounts to the price or weight of the Products will be provided for settling, impurities or shortages thereof, unless otherwise agreed in writing by POET.

**4. Taxes.** The price of the Products will be deemed to include all sales, consumer, use, excise, and other taxes associated with or levied upon the sale and purchase of the Products, unless otherwise agreed in writing by POET. Seller will be responsible for the payment of all such taxes and will indemnify, defend and hold harmless POET for any such taxes claimed due.

**5. Payment.** POET will remit payment in full for the Products within thirty (30) days of the later of: (a) POET's receipt of an accurate invoice for the Products or (b) the delivery of the Products to POET in accordance with these Terms. All payments including claims shall be made in U.S. Dollars; and, all such payments must be made to POET Nutrition's bank account in the United States.

**6. Delivery; Title.** Seller will deliver the Products to the FOB point, and in accordance with the instructions, described in POET's Contract for Purchase, unless otherwise agreed in writing by POET. Title to, and risk of loss of, the Products will pass to POET at such designated FOB point. Time is of the essence in the delivery of the Products. If the Products are not delivered in accordance with POET's instructions, Seller will be responsible for all additional costs incurred by POET as a result of Seller's failure to so comply.

**7. Weights; Units of Sale.** All weights of the Products will be on a net weight basis in tons or pounds. The unit weight is the avoirdupois pound (16 ounces). The unit of sale, if agreed by POET, may be by rail car, truck, barge, container or similar bulk conveyance, in which case such weights will be approximate, must be agreed upon in advance by POET and Seller, and are not subject to overfill or underfill claims by either party. If the unit of sale is tons, overfill and underfill claims will apply.

**8. Labeling; Packaging.** Seller will label and package the Products in accordance with all applicable federal, state, local and foreign packaging and labeling laws. Seller will package the Products and take all other steps necessary to ensure safe and orderly delivery of the Products.

**9. Inspection; Acceptance.** POET is entitled to inspect, test and approve Products delivered to POET prior to POET's acceptance of such Products. POET, at its option, may inspect and/or test the Products at Seller's facility, off-site, or other point of destination. In no event will payment or transfer of title constitute acceptance of the Products. Acceptance of the Products by POET will not relieve Seller from any of its obligations or warranties under these Terms.

**10. Warranty.** Seller expressly warrants that: (a) Seller has good and marketable title to the Products and that the sale thereof to POET will be free and clear of any liens, claims, security interests or encumbrances; (b) the Products are free from defects and conform strictly to the standards and specifications stated in POET's Contract for Purchase or otherwise stipulated by POET; (c) the Products comply with all applicable federal, state, local and foreign laws applicable to the production and sale of the Products; (d) the Products are labeled and marked in accordance with all applicable laws and POET's instructions; and (e) the Products are of a merchantable quality and fit and sufficient for the purpose ordered.

**11. Defective Products.** If any of the Products fail to meet the warranties described in Section 10 above (such non-conforming Products, "Defective Products"), Seller will, upon notice from POET, promptly replace the Defective Products at Seller's sole expense. If Seller fails to promptly replace the Defective Products, Seller will reimburse POET for all costs incurred by POET to replace the Defective Products. In addition, POET will be entitled to any and all other remedies described in Section 13 below due to Seller's delivery of Defective Products.

**12. Changes.** POET, at any time by notice to Seller, may change the Product specifications, time or place of delivery, method of transportation or other requirements. POET and Seller will negotiate an equitable adjustment in price and terms if Seller's costs are materially affected by such change, unless the change is due to Seller's nonconformance or breach.

**13. Default.** In the event: (a) Seller delivers Products which fail to meet the warranties and other requirements of these Terms; (b) Seller fails to timely deliver the Products in accordance with the instructions and specifications of POET; (c) Seller breaches or violates any other representation, warranty or agreement of Seller under these Terms; (d) a voluntary or involuntary petition in bankruptcy is filed against Seller or Seller becomes insolvent or makes an assignment for the benefit of creditors; (e) Seller is dissolved, liquidated, merged or transfers a substantial part of its assets; (f) all or a controlling portion of Seller's stock or other ownership interest is transferred; or (g) Seller's financial condition becomes unsatisfactory to POET, then POET, in addition to all rights or remedies hereunder or at law or in equity, may: (i) cancel all outstanding orders for Products without liability to Seller; (ii) recover from Seller all direct, indirect, incidental, special and consequential damages arising from or relating to Seller's default; and (iii) recover attorneys' fees and costs incurred by POET in enforcing these Terms.

**14. Indemnity.** Seller will defend, indemnify and hold harmless POET and its affiliates, officers, directors, consultants, employees, agents and assigns from and against any losses, damages, claims, liabilities and expenses, including attorneys' fees, arising from or related to: (a) the nonconformance of any Products to the warranties described in these Terms; (b) Seller's violation of any of its representations, warranties or obligations under these Terms or POET's Contract for Purchase; or (c) Seller's violation of any applicable law.

**15. Insurance.** Seller will maintain, at its expense, commercial liability insurance providing coverage for POET as an additional insured and insuring against liability for any injury, damage or loss arising out of allegedly defective or nonconforming Products, including coverage for products-completed operations hazard, regardless of the theory of liability or causation alleged in the underlying claim. Such insurance will be primary to, and not in excess of or contributory with, other insurance available to POET and will provide coverage in an amount equal to the full amount maintained by Seller in the normal course of Seller's business (including excess and umbrella liability coverage), but in no event may such combined coverage be in an amount of less than \$2,000,000 per occurrence. Seller will provide POET with a certificate of insurance evidencing this coverage annually or upon request of POET.

**16. Confidential Information.** Information or materials transmitted by POET to Seller in conjunction with POET's purchase of the Products may contain information confidential and proprietary to POET or its affiliates. Seller may not use such information except in conjunction with the performance of the transactions contemplated by these Terms and may not disclose such information to any third parties without the prior written consent of POET. The confidentiality obligations set forth in this section are in addition to, and not in derogation of, Seller's obligations of confidentiality under any other agreement with POET, including any non-disclosure agreements and/or material transfer agreements. In the event of a conflict between the terms of such other agreements and these Terms, the terms of such other agreements will govern and control.

**17. Legal Compliance.** Seller will comply with all applicable laws, regulations and administrative rules governing the production and sale of the Products, including all environmental laws and regulations and all laws and regulations governing the export or import of the Products. Seller will give all notices required by such laws which apply to the Products.

**18. Notices.** POET and Seller may transmit and receive documents and notices by email in lieu of written documents and notices, unless objected to by Seller. The failure of Seller to object to such notification method within five (5) days of Seller's receipt of these Terms will constitute Seller's agreement to future electronic notifications between the parties.

**19. Assignment.** These Terms will bind and inure to the benefit of POET and Seller and their respective successors and assigns. Seller may not assign or delegate any rights or obligations under these Terms without POET's prior written consent. In the event Seller is a corporation or other legal entity, a prohibited assignment by Seller will be deemed to have occurred upon the transfer of a majority of shares or other ownership interests in Seller, whether such transfer takes place in one transfer or successive transfers over time. POET may assign its rights and obligations under these Terms without Seller's consent.

**20. Waiver.** POET will not be deemed to have waived any of its rights or remedies under these Terms or any applicable law unless the waiver is in a writing signed by POET, and no waiver of a right or remedy will operate as a waiver of such right or remedy on any future occasion.

**21. Severability.** Each provision of these Terms is severable and the invalidity of any one or more such provisions will not in any way affect the validity of any other provisions of the Terms.

**22. Governing Law; Venue.** The laws of the State of South Dakota will govern the validity, performance and construction of these Terms and the applicable POET Contract for Purchase, and any disputes arising from or relating to these Terms, such POET Contract for Purchase and/or the transactions contemplated hereunder.

**23. Disputes.** All disputes arising out of the performance or non-performance of the parties' obligations hereunder will be settled by arbitration. If the Products are distillers products, the arbitration proceedings will be in Minnehaha County, South Dakota before the National Grain and Feed Association ("NGFA") pursuant to the NGFA® Arbitration Rules. If the Products are corn oil products, the arbitration proceedings will be in Minnehaha County, South Dakota pursuant to the American Fats and Oils Association, Inc. Arbitration Rules. Any judgment based on an arbitration award hereunder may be entered in any court of competent jurisdiction.

**24. Remedies; Limitations on Damages.** POET has all rights allowed by law or in equity relating to Seller's sale and delivery of the Products to POET, and all such remedies are cumulative. POET will not be liable to Seller for incidental, indirect, special, consequential or punitive damages arising from, or relating to, any action or inaction of POET relating to POET's purchase of the Products hereunder.

**25. Entire Agreement; Amendment.** These Terms, together with the applicable POET Contract for Purchase, constitute the entire agreement between Seller and POET with regard to the Products and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating thereto. These Terms may not be superseded, cancelled or amended except in a writing signed by POET. No other act, document, usage or custom will be deemed to supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid, illegal or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.