

## **Purchase Contract Terms and Conditions**

UNLESS OTHERWISE AGREED TO BY SELLER AND BUYER IN WRITING, ALL PURCHASE CONTRACTS OR CONFIRMATIONS OF PURCHASE ARE ISSUED IN ACCORDANCE WITH THE CONDITIONS BELOW AND ALSO AT:

[www.birdsongpeanuts.com](http://www.birdsongpeanuts.com)

**ALL SPECIFICATIONS CONTAINED IN ANY CONTRACT FOR PURCHASE OR CONFIRMATION OF PURCHASE WHERE BIRDSONG IS THE BUYER ARE SUBJECT TO ALL PURCHASE CONDITIONS BELOW, WHICH ARE EXPRESSLY MADE A PART OF, AND INCORPORATED INTO, THE CONTRACT FOR SUCH PURCHASE.**

ALL PURCHASE CONTRACTS ENTERED INTO BY BIRDSONG PEANUTS WHERE BIRDSONG PEANUTS IS THE PURCHASER ("BUYER") ARE SUBJECT TO THE AMERICAN PEANUT SHELLERS ASSOCIATION ("APSA") SHELLED, INSHELL TRADING RULES REVISED AUGUST 6, 2019, TO THE EXTENT APPLICABLE AND SELLER SPECIFICALLY AGREES TO THE APPLICATION OF SUCH RULES. IF ANY CONFLICT EXISTS BETWEEN SUCH RULES AND ANY OTHER PROVISION OF THESE CONDITIONS, SUCH OTHER PROVISIONS OF THESE CONDITIONS SHALL PREVAIL.

THE CONDITIONS HEREIN SHALL PREVAIL NOTWITHSTANDING ANY VARIANCE WITH THE TERMS AND CONDITIONS OF ANY SALES DOCUMENTATION OF SELLER. BUYER OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS PROPOSED BY SELLER OR ANY OTHER PERSON NOT SET FORTH HEREIN.

- I. Seller will be deemed to have accepted all of the conditions hereof upon the occurrence of any one of the following: (i) a contract is signed by Seller and returned to Buyer; or (ii) Seller ships or delivers to Buyer any of the goods described on the face of any purchase contract or confirmation, whether Seller has signed or not; or (iii) Seller otherwise commences performance under a contract, whether Seller has signed or not; or (iv) a contract is made in response to a proposal, offer or quotation made by Seller to Buyer and Seller does not object in writing to Buyer's conditions within five (5) days. Payment by Buyer shall not constitute acceptance of any different or additional terms or conditions not contained herein.
2. The price specified in the contract for purchase and/or other purchase confirmation documents (collectively, the "Contract") includes all taxes (except applicable sales or use taxes required to be paid by Buyer), all related duties and tariffs, import fees and other government charges, and any surtaxes and surcharges. No charges by Seller for extras, transportation, storage, insurance, boxing, packing or crating will be allowed, except those allowed by applicable APSA trading rules or unless otherwise agreed to by Buyer in writing.
3. Time is of the essence to Buyer and deliveries must be made in the quantities and at the times specified in the Contract. Notwithstanding any agreement to pay freight, express or

other transportation charges, delivery shall not be deemed to be complete until the goods have been actually received and accepted by the Buyer. Transshipment is not permitted unless agreed to by Buyer in writing.

4. Buyer shall have the right to inspect the premises of Seller used in the production of the goods purchased. Seller shall furnish such information as Buyer may reasonably request relating to the handling, storage, inspection or loading of the goods purchased. If requested by Buyer, Seller shall deliver to Buyer, certificates of weight setting forth the actual shipping weights of the goods and inspection or test results from inspection samples taken and analyzed in accordance with normal inspection procedures by USDA or other approved organizations, if applicable.
5. Without limiting Buyer's other rights and remedies, Buyer shall be entitled to set off any amount owing at any time from Seller to Buyer against any amount payable at any time by Buyer to Seller.
6. Seller warrants that it has good marketable title to all goods delivered and that all such goods shall be free and clear of all liens and encumbrances whatsoever. Seller further warrants that the goods and/or their use or sale, do not and will not infringe any patent, trademark, copyright or other intellectual property right and there is no unauthorized use of proprietary rights of another party. Seller agrees to indemnify Buyer, its agents, vendors and customers against any and all expenses, losses, royalties, profits and damages, including court and/or settlement costs and attorney's fees resulting from any suit or proceeding which may be brought against Buyer in case of such infringement or alleged infringement.
7. The institution of any proceedings by or against Seller, voluntarily or involuntarily, under the bankruptcy or insolvency laws or for the appointment of a receiver or trustee or assignee for the benefit of creditors shall be deemed an event of default under these conditions, the Contract and shall entitle Buyer to suspend performance of or to terminate the Contract.
8. Seller shall strictly comply with all specifications set forth herein and on the face of the Contract. Without in any way limiting the foregoing, Seller warrants that at the time of delivery, the goods supplied will be fit and sufficient for their intended use, will be merchantable and will be of good quality and free from defects in design, workmanship and materials including, but not limited to, such defects as could create a hazard to life or property. Seller further warrants that all goods, including the production, packaging and labeling thereof, conform to the description set forth in the Contract and comply in every respect to the requirements of all applicable federal, state and local laws, rules, regulations and ordinances. Upon Buyer's request, Seller shall furnish to Buyer, Seller's certificate that all such laws, rules, regulations and ordinances have been satisfied with respect to the goods purchased under the Contract. All such warranties run to Buyer, its successors, assigns and customers, and survive inspection, delivery, acceptance or payment by Buyer. Deliveries of product that are defective or that do not conform to the Contract, for which Seller has not provided Buyer with adequate assurances of future performance shall entitle Buyer to terminate the Contract.
9. Any liability of Buyer for nonpayment of accepted goods shall be limited solely to the price of such goods. **IN NO EVENT SHALL SELLER BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES.**
10. Seller agrees that it will assume the risk for, and pay all costs and expenses associated with, work stoppages, strikes or compliance with any applicable foreign or domestic governmental regulation or order that delay or divert the product while in transit or that cause the non-delivery of the product.

11. No broker is authorized to act or sign for Buyer nor to change or alter the Contract in any way unless specifically authorized in writing signed by Buyer. Broker's fees, if any, shall be paid by Seller unless otherwise agreed to in writing signed by Buyer.
12. SELLER SHALL DEFEND, INDEMNIFY AND HOLD BUYER, ITS CUSTOMERS AND ANY USERS OF THE GOODS, HARMLESS AGAINST ALL DAMAGES, CLAIMS, LIABILITIES, COSTS AND/OR EXPENSES (INCLUDING ATTORNEY'S FEES) ARISING OUT OF OR RESULTING IN ANY WAY FROM ANY DEFECT IN THE GOODS PURCHASED, FROM ANY ACT OR OMISSION OF SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR FROM SELLER'S BREACH OF ANY WARRANTY, OR FAILURE OR REFUSAL TO COMPLY WITH THE CONTRACT OR AS OTHERWISE PROVIDED BY LAW.
13. The arbitration provisions of the APSA trading rules shall apply notwithstanding the inclusion herein of (b) and (c) below. However, if for any reason the arbitration provisions of the APSA trading rules should not apply, then in that event (b) and (c) below shall be a part of the Contract and shall prevail over conflicting provisions, if any.
  - o (a) In the event legal action is pursued involving the Contract, including but not limited to, actions to interpret or to enforce any of the obligations therein, the prevailing party shall be entitled to a recovery of reasonable attorney's fees and costs expended in such action, unless prohibited by law.
  - o (b) REGARDLESS OF THE PLACE OF EXECUTION, THE CONTRACT AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES UNDER THE CONTRACT AND THESE CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE AND COUNTRY OF THE BUYER. ANY DEMAND, SUIT OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO A PURCHASE OF SHELLED PEANUTS OR INSHELL PEANUTS, SHALL BE BROUGHT IN A COURT LOCATED IN THE STATE OF THE BUYER. SELLER HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE CONTRACT. ANY COURT ACTIONS SHALL BE COMMENCED NO MORE THAN 2 YEARS AFTER THE DATE OF THE ALLEGED LOSS OR INJURY (or within the shortest limitations period which applicable law permits). ANY DEMAND, DISAGREEMENT, DISPUTE OR CONTROVERSY ARISING OUT OF OR RELATING TO THE PURCHASE OF PEANUT MEAL, PEANUT HULLS, PELLETS OR HULL GRANULES AND/OR PEANUT OIL SHALL BE RESOLVED BY ARBITRATION ADMINISTERED BY THE TGFA (for Texas transactions involving peanut meal or peanut hulls, pellets or hull granules), THE NGFA (for all non-Texas transactions involving peanut meal or peanut hulls, pellets or hull granules) OR THE NCPA (for all transactions involving peanut oil) UNDER THE ARBITRATION RULES OF THE APPLICABLE ASSOCIATION. ANY COURT OF COMPETENT JURISDICTION MAY ENTER JUDGMENT ON AN AWARD RENDERED BY THE APPROPRIATE ARBITRATION PANEL.
  - o (c) IF SELLER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE OF THE UNITED STATES OF AMERICA, SELLER AGREES TO SUBMIT ANY DISPUTE UNDER ANY CONTRACT AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES ARISING OUT OF

ANY CONTRACT TO BINDING ARBITRATION BEFORE A SINGLE ARBITRATOR ADMINISTERED IN SUFFOLK, VIRGINIA BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES. ANY COURT OF COMPETENT JURISDICTION MAY ENTER JUDGMENT ON AN AWARD RENDERED BY THE ARBITRATOR(S). HOWEVER, IF FOR ANY REASON ARBITRATION IS NOT AVAILABLE, THEN SELLER AGREES TO SUBMIT TO THE JURISDICTION AND VENUE OF THE COURTS OF THE COMMONWEALTH OF VIRGINIA LOCATED IN SUFFOLK VIRGINIA. TO THE FULLEST EXTENT, PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HERBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE CONTRACT. ANY COURT ACTIONS SHALL BE COMMENCED NO MORE THAN 2 YEARS AFTER THE DATE OF THE ALLEGED LOSS OR INJURY (or within the shortest limitations period which applicable law permits).

14. Buyer hereby reserves all of its other legal and equitable rights and remedies.
15. THE CONTRACT AND THESE CONDITIONS CONTAIN THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER AND MAY NOT BE MODIFIED, AMENDED, ALTERED OR RESCINDED WITHOUT A WRITTEN AGREEMENT SIGNED BY BUYER AND SELLER.
16. If any provision of the Contract or these Conditions is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision. In the event a provision is held invalid, applicable provisions of the Uniform Commercial Code, if any, shall be substituted for the invalid provision.