

Nature's Answer, Inc.

General Terms and Conditions of Sale for B2B Transactions

1. Applicability.

(a) These general terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") by Nature's Answer, Inc. ("**Seller**") to the purchaser of the Goods ("**Buyer**") identified in the accompanying sales order confirmation (the "**Sales Confirmation**" and these Terms collectively, this "**Agreement**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of the contract shall prevail to the extent they are inconsistent with these Terms.

(b) This Agreement comprises the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

2. Delivery.

(a) Seller shall use commercially reasonable efforts to deliver the Goods on the expected delivery date stated in the Sales Confirmation; provided, however, that such expected delivery date is an estimate only and Seller shall not be held liable for any loss incurred by Buyer in the event of a delivery delay. If no delivery date is stated in the Sales Confirmation, the Goods shall be delivered within a reasonable time.

(b) Seller shall deliver the Goods at the location specified in the Sales Confirmation (the "**Delivery Point**"). Buyer shall take delivery of the Goods within seven (7) days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. [Intentionally Omitted].

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to ten-percent (10%) more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms. Delivery shall be made in accordance with the terms on the face of the Sales Confirmation.

6. Title and Risk of Loss. Title and risk of loss pass to Buyer upon tender of the Goods to the carrier at the Delivery Point or in accordance with Article 2(d) of this Agreement.

7. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within five (5) Business Days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents. "**Business Day**" means any day other than a Saturday, a Sunday or a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law to close.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If agreed to by Seller, Buyer shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to a location designated by Seller in writing.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price.

(a) Buyer shall purchase the Goods from Seller at the price (the "**Price**") set forth in the Sales Confirmation.

(b) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties (including customs duties), and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect

to, Seller's income, revenues, gross receipts, personnel, or real or personal property or other assets.

10. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by either ACH/wire transfer or by check and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

11. No Warranty. **SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

12. Limitation of Liability.

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 12(b) above shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Intellectual Property.

(a) Buyer acknowledges that it has no rights in or to any of the intellectual property, including without limitation the trademarks and trade dress, copyrightable material, domain

names, generic top-level domain name (gTLD), and patents used on and/or in connection with any of the Goods whether used on the Goods, packaging, labeling, advertising, sales promotion materials, or otherwise ("**Intellectual Property**"). Buyer shall not attempt directly or indirectly to register, or otherwise make any claim of ownership or any other right in any of said Intellectual Property or anything confusingly similar thereto, and shall not at any time do, or cause to be done, any act or thing impairing or tending to impair any of the Intellectual Property.

(b) Buyer shall not in any way alter, or permit the alteration of, the content, composition, presentation, container, packaging, or trademarks of any of the Goods as supplied by Seller. Any and all use of any of the Intellectual Property by Buyer shall inure to the benefit of Seller, and Buyer shall assist Seller or its designee with any requested proof of use, or anything else requested by Seller or its designee, to register, maintain, or defend any of the Intellectual Property. Seller may terminate this Agreement immediately upon written notice to Buyer in the event Buyer materially breaches this provision.

(c) Buyer shall notify Seller promptly of (i) any claim or action alleging the Buyer's activities relating to the Goods and the Intellectual Property are infringing upon the intellectual property rights of others and (ii) any infringement of any of the Intellectual Property by others which comes to Buyer's attention.

(d) Buyer hereby acknowledges that Seller has made no representations or warranties with respect to the status of any of the Intellectual Property including, but not limited to, the availability for use of the trademark(s) used on the Goods, or the ability to import, sell, or distribute any of the Goods, without infringing upon the rights of any third party, and Seller hereby disclaims any such representations or warranties. Any import, sale, or distribution of any of the Goods anywhere by Buyer shall be at Buyer's sole risk and responsibility, notwithstanding Buyer's obligations under Section 13(c) above.

14. Buyer's Credit. If Seller becomes dissatisfied with Buyer's creditworthiness, Seller may change payment terms or decline to make further deliveries until such time as Buyer's credit has been established to Seller's satisfaction, unless Buyer satisfies any outstanding balance in accordance with a schedule to be set by Seller and pays in advance for any further shipments.

15. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

16. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

17. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

18. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

19. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, acts of God or the public enemy, fire, flood, acts of war, government action, accident, earthquakes, explosion, epidemic, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. The Impacted Party shall give notice within three (3) Business Days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

22. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

23. Governing Law. All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

24. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the County of Suffolk, State of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

25. Attorney's Fees. If any litigation is commenced arising out of this Agreement, the prevailing party shall be entitled to reimbursement from the non-prevailing party of all costs, expenses and reasonable attorney's fees associated with such litigation.

26. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

27. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

28. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.