

THE GIORGI COMPANIES' STANDARD TERMS AND CONDITIONS OF SALE

(Giorgio Foods, Inc., Giorgio Fresh Co., Can Corporation of America, Inc., Giorgio Mushroom Co., Ontelaunee Farms, Inc., and All Seasons Products, Inc.)

1. Applicability.

(a) These Standard Terms and Conditions of Sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by the Giorgio Company named on the accompanying documents ("Seller") to the buyer named therein ("Buyer"). 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 said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The accompanying documents (confirmation of sale and/or invoice or similar document from Seller) (the "**Sales Confirmation**" and these Terms (collectively, this "Agreement")) comprise the entire agreement between the parties, and supersede 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 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) The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of the Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Buyer's location (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods immediately upon delivery at the Delivery Point. Buyer shall be responsible for all unloading 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 agreed date, or if Seller is unable to deliver the Goods at the Delivery Point on such date 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 and depending on the nature of the Goods, may either return the Goods to the point of shipment, or store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, transportation, storage and insurance).

3. Non-Delivery / Late Delivery.

(a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within one (1) day of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery or late delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to five percent (5%) 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. Unless otherwise agreed by the parties, delivery shall be made FOB Buyer's location. If Buyer has agreed to pay any common carrier (including, without limitation, motor freight carrier or rail carrier) for any shipment and fails to pay such freight charges, Buyer shall defend, indemnify, and hold Seller harmless from and against any demand, claim, loss, liability, suit, damages, or cost (including reasonable attorneys' fees) in connection with any claim by any such common carrier against Seller for such unpaid freight charges. This provision shall take precedence over any contrary law, regulation, tariff or contract term.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable Uniform Commercial Code.

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 immediately upon receipt, unless the parties have agreed to a different time period ("**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 (for fresh produce) or as soon thereafter as practicable, not to exceed five (5)

days (for all other Goods) 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; (ii) product's label or packaging incorrectly identifies its contents; or (iii) product is obviously defective or is obviously not in compliance with specifications.

(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. Buyer shall follow Seller's reasonable instructions concerning the disposition of Nonconforming Goods, at Seller's cost and expense.

(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), unless the parties agree otherwise, 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[s] (the "Price[s]") set forth in Seller's Order Confirmation, Seller's established price list, or as otherwise agreed between the parties in writing or electronically.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, 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 / Statutory Trust for the Sale of Fresh Produce.

(a) Buyer shall pay all invoiced amounts due to Seller within such number of days as set forth in Seller's invoice or within thirty (30) days if unspecified. Buyer shall make all payments hereunder 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 and such failure continues for five (5) days following written notice thereof.

(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.

(d) For all sales of fresh produce made under these Standard Terms and Conditions of Sale, Buyer shall pay for the Goods within ten (10) days after receipt, unless the parties shall have agreed to a different payment period not to exceed thirty (30) days, and such Goods are sold by Seller to Buyer subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act of 1930, 7 U.S.C. section 4992(c) (“PACA”). Seller retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received. In the event any action or proceeding is commenced to enforce the terms of the transactions or Seller’s PACA rights, Buyer agrees to pay all costs of enforcement, including all reasonable attorneys’ fees, together with any costs and expenses, as additional sums owed in connection with the transactions. Finance charges shall accrue on any past due balances at the rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) effective thirty (30) days from the date each invoice becomes due, or the maximum rate of interest allowable by law, and will be computed daily and compounded annually.

11. Limited Warranty; Indemnification.

(a) Each Giorgi Company hereby incorporates its Standard Product Warranty or Food Guaranty, as appropriate.

(b) **EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(A), 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; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's

cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(e) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(f) Subject to Section 11(d) and Section 11(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 11(F) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(A).

(h) Buyer shall indemnify, defend and hold Seller harmless from any against any loss, cost or liability of any type or kind arising as a result of Buyer's negligent or willful acts or omissions including those set forth in this Section 11(e), and shall maintain commercially reasonable types and limits of insurance in support of same.

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 LOSS OF DATA OR DIMINUTION IN VALUE, 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 liability resulting from Seller's gross negligence or willful misconduct.

13. Compliance with Law. Both parties shall comply with all applicable laws, regulations and ordinances, and shall maintain in effect all the licenses, permissions,

authorizations, consents and permits that it needs to carry out its obligations under this Agreement.

14. 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 and such failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (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.

15. 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.

16. 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 without the need to post bond or other financial assurance. 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.

17. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), restraints, constraints or delays affecting carriers, tariffs or sanctions imposed by governmental authorities, or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of ninety (90) days, Buyer shall be entitled to give notice in writing to Seller to terminate this Agreement.

18. 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.

19. 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.

20. 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.

21. Governing Law; Jurisdiction. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision or rule and any legal suit, action or proceeding arising out of or relating to this Agreement shall be litigated only in the federal courts located in the Eastern District of Pennsylvania, or the Court of Common Pleas of Berks County, Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any claim of forum non conveniens.

22. 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 the Sales Confirmation 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), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, 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.

23. 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.

24. 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: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction, and Survival.

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