

Birdsong Sales Contract

UNLESS OTHERWISE AGREED TO BY SELLER AND BUYER IN WRITING, ALL SALE CONTRACTS AND CONFIRMATIONS OF SALE ARE ISSUED IN ACCORDANCE WITH THE CONDITIONS BELOW AND ALSO AT: www.birdsongpeanuts.com

BUYER AGREES THAT IT WILL FURTHER CLEAN, SORT, PROCESS, ROAST, PACKAGE AND LABEL THE PEANUTS, PEANUT MEAL, PEANUT OIL, PEANUT HULLS, PEANUT HULL PELLETS, OR PEANUT HULL GRANULES AS APPROPRIATE, AND WILL PERFORM ALL NECESSARY STEPS TO MAKE THE FINISHED PRODUCT FIT FOR THE ULTIMATE CONSUMER.

ALL SPECIFICATIONS CONTAINED IN ANY SALES CONTRACT OR CONFIRMATION OF SALE ARE SUBJECT TO ALL SALES CONDITIONS BELOW, WHICH ARE EXPRESSLY MADE A PART OF, AND INCORPORATED INTO, THE CONTRACT FOR SUCH SALE.

SALES CONDITIONS

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

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

1. Buyer will be deemed to have accepted all of the conditions hereof upon the occurrence of one of the following: (i) a contract is signed by Buyer and returned to Seller, or (ii) Seller ships or delivers to Buyer any of the product described on the face of the sales contract, whether Buyer has signed a contract or not, or (iii) whether Buyer has signed a contract or not, a contract is created in response to a proposal, offer or quotation made by Buyer to Seller and Buyer retains the contract without written objection for five (5) days, or (iv) acceptance of any of the product by Buyer. Product may include but is not limited to, any of the following: shelled peanuts, inshell peanuts, peanut meal, peanut oil, peanut hulls (ground or unground), pellets or hull granules.
2. Seller warrants good title to the product sold hereunder. If the product sold to Buyer is shelled peanuts or inshell peanuts, Seller will comply with the applicable provisions of 7 CFR Part 996. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THOSE STATED HEREIN. SELLER EXPRESSLY DISCLAIMS ANY AND

ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, USAGE OF TRADE, COURSE OF DEALING, COURSE OF PERFORMANCE, AND FITNESS FOR PARTICULAR PURPOSE.

3. If the product sold to Buyer is shelled peanuts or inshell peanuts, Buyer agrees that it will further clean, sort, process, roast, package and label the peanuts, as appropriate and in accordance with good industry practices, and will perform all necessary steps to make the finished product fit for the ultimate consumer.
4. If the product sold to Buyer is peanut oil or peanut meal, peanut hulls, pellets or hull granules, the current applicable trading rules of the National Cottonseed Products Association ("NCPA") for all transactions involving peanut oil or the Texas Grain and Feed Association ("TGFA") (for Texas transactions involving peanut meal or peanut hulls, pellets or hull granules), or the National Grain and Feed Association ("NGFA") (for non-Texas transactions involving peanut meal or peanut hulls, pellets or hull granules), shall apply to this sale except to the extent that such rules conflict with the express terms hereof.
5. If Buyer fails to provide timely shipping instructions as required by the APSA or fails to make payment for delivered goods when due, Seller (with or without notice to Buyer) may immediately terminate the sales contract in its entirety, or resell for the account of Buyer the undelivered portion of the sales contract for which shipping instructions were due and not furnished or exercise any other available remedy. If Buyer has multiple sales contracts with Seller and Buyer defaults on any one of such contracts, Seller (with or without notice to Buyer) may immediately terminate all sales contracts with Buyer in their entirety, or resell for the account of Buyer any undelivered portion of such contracts or exercise any other available remedy.
6. SELLER'S MAXIMUM LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ALL CLAIMS ARISING OUT OF ANY SALE ARE EXPRESSLY LIMITED TO PAYMENT NOT TO EXCEED THE PURCHASE PRICE PAID BY BUYER TO SELLER OR REPLACEMENT OF ANY NON-CONFORMING PRODUCT, AT SELLER'S SOLE OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING IN CONNECTION WITH ANY CONTRACT OF SALE.
7. Buyer agrees that if Buyer makes any transfer of assets or incurs any obligation which results in Buyer not having sufficient assets to satisfy all unpaid amounts owed to Seller, such transfer or obligation shall be deemed to have been made or incurred with actual intent to hinder, delay or defraud Seller. In addition, Buyer agrees that any transfer of assets or incurrence of any obligation that does not adequately provide for all amounts owed to Seller, shall be deemed a transaction in which Buyer did not receive reasonable equivalent value in exchange. Buyer further agrees to give prior written notice of this provision to any person to whom any transfer is made or obligation incurred which causes, or is likely to cause, Buyer to have insufficient assets to satisfy all unpaid amounts owed to Seller.
8. Buyer 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 delays or diverts the product while in transit or that causes the non-delivery of the product.

9. Buyer shall make payment: (a) in full, without set-off, counterclaim or withholding of any kind; and (b) in United States dollars and cents within thirty (30) days following the date of the invoice, unless otherwise specified by Seller. No payment shall be deemed to have been received until Seller has received credited or immediately available funds in the amount Buyer owed.
10. 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 (b) and (c) below shall be part of these conditions and shall prevail over conflicting provisions, if any.
- (a) In the event legal action is pursued involving a sales contract with Seller, including but not limited to, an action to interpret or to enforce any of the obligations hereunder, the prevailing party shall be entitled to a recovery of reasonable attorney's fees and costs expended in such action, unless prohibited by law.
 - (b) REGARDLESS OF THE PLACE OF EXECUTION, A SALES CONTRACT BETWEEN THE PARTIES AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES UNDER A SALES CONTRACT AND THESE CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE AND COUNTRY OF THE SELLER. ANY DEMAND, SUIT OR CAUSE OF ACTION ARISING OUT OF OR RELATING TO SALES OF SHELLLED PEANUTS OR INSHELL PEANUTS, SHALL BE BROUGHT IN A COURT LOCATED IN THE STATE OF THE SELLER. BUYER HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF SUCH COURT. 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 A SALES 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 SALE 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.
 - (c) IF BUYER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE OF THE UNITED STATES OF AMERICA, BUYER AGREES TO SUBMIT ANY DISPUTE WITH SELLER AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES ARISING OUT OF A

SALES CONTRACT WITH SELLER, TO BINDING ARBITRATION 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 BUYER 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 HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY CONTRACT WITH SELLER. 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).

11. Without prejudice to Seller's other rights, Seller reserves the right to: (i) charge interest on any overdue sums not to exceed the applicable laws during the period of non-payment; (ii) suspend performance of the Contract (including withholding shipment) in the event that Buyer fails or in Seller's reasonable opinion it appears that Buyer is likely to fail to make payment when due under this sales contract or any other agreement; and (iii) at any time require from Buyer such reasonable security for payment as Seller may deem reasonable.
 12. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.
 13. Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller. In the event that Seller consents to the assignment, the assignee will adhere to, and be bound by, these terms and conditions.
 14. THE SALES CONTRACT AND THESE CONDITIONS CONTAIN THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER REGARDING THE SUBJECT MATTER HEREOF AND MAY NOT BE MODIFIED, AMENDED, ALTERED, OR RESCINDED WITHOUT THE WRITTEN APPROVAL OF BUYER AND SELLER.
 15. If any provision of the sales contract between the parties is held invalid, such invalidity shall not affect other provisions of the contract and the conditions herein 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.
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CONDITIONS

THIS CONTRACT IS 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 THIS CONTRACT, SUCH OTHER PROVISION OF THIS CONTRACT 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 PROPOSED BY SELLER OR ANY OTHER PERSON NOT SET FORTH HEREIN.

1. Seller will be deemed to have accepted all of the conditions herein upon the occurrence of any one of the following: (i) this 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 side hereof, whether Seller has signed or not; or (iii) Seller otherwise commences performance under this contract, whether Seller has signed or not; or (iv) if this contract is 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 not contained herein.
2. Unless otherwise indicated, the price specified herein 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 specified herein or 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 herein. 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, pursuant to this contract, 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 this contract and shall entitle Buyer to suspend performance of or to terminate this contract.
8. Seller shall strictly comply with all specifications set forth on the face hereof. Without in any way limiting the foregoing, Seller warrants that at the time of delivery, the goods supplied hereunder 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 on the face hereof 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 this 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 this contract, for which Seller has not provided Buyer with adequate assurances of future performance shall entitle Buyer to terminate this contract
9. Any liability of Buyer for nonpayment of accepted goods shall be limited solely to the price of such goods. specified herein. 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 this 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 HEREUNDER, FROM ANY ACT OR OMISSION OF SELLER, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR FROM SELLER'S

BREACH OF ANY WARRANTY AS PROVIDED HEREIN, OR FAILURE OR REFUSAL TO COMPLY WITH THIS 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 this contract and shall prevail over conflicting provisions, if any.

(a) In the event legal action is pursued involving this contract, including but not limited to, actions to interpret or to enforce any of the obligations hereunder, the prevailing party shall be entitled to a recovery of reasonable attorney's fees and costs expended in such action, unless prohibited by law.

(b) REGARDLESS OF THE PLACE OF EXECUTION, THIS CONTRACT AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF 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 THIS 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.

(c) IF SELLER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED OUTSIDE OF THE UNITED STATES OF AMERICA, SELLER AGREES TO SUBMIT ANY DISPUTE UNDER THIS CONTRACT AND THE DETERMINATION AND ENFORCEMENT OF ALL RIGHTS AND DUTIES ARISING OUT OF THIS 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 THIS 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 this contract or these conditions is held invalid, such invalidity shall not affect other provisions of this contract and the conditions herein, 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.