

TERMS AND CONDITIONS

***AUTOMATIC INCREASE IN PRICE IN CERTAIN CASES:** If the time of shipment herein specified, under caption "Time of Shipment" is longer period than sixty (60) days from the date hereof, then in such case on installments of this contract shipped after sixty (60) days from the date hereof and prior to the time fixed herein for final shipment under said caption, it is agreed that the basic price above specified per cwt of flour made from wheat shall be automatically increased one-half cent (1/2 ¢) per cwt per day, commencing on the sixty-first (61st) day after the date hereof, and continuing until the date of shipment within said time fixed herein for final shipment.

CHANGES: ADJUSTMENTS: LIMITATIONS: Buyer may direct shipment of all or any part of said flour in containers of a different size or kind specified in the above column heading "Containers" if any are therein specified or in containers if "Bulk" is specified in said column, in either which case the price shall be adjusted in accordance with Seller's package differential schedule in effect at date hereof. If "Bulk" is specified in said column, Seller nevertheless shall not be obligated to ship in bulk unless so specified under the caption "Mode of Shipment" below and then only as therein specified.

TIME OF SHIPMENT: On directions to be furnished by Buyer shipment is to be made as follows:

NET WEIGHTS: The commodities covered by this contract are sold on the basis of net weights when packed, or, if shipped in bulk, net weights when loaded.

COLLECTIONS: Where Buyer designates the collecting bank, he shall be responsible to Seller for any loss or damage to Seller by reason of any failure or default, on the part of said bank in connection with payment by Buyer under this contract.

TAXES: The prices set forth in the within contract include any and all taxes, impositions, exactions, or charges of every nature in effect on the date of the execution hereof. Any and all taxes, impositions, exactions, or charges, or any increase therein, whether for revenue or for regulation of commerce, or for any other purpose, not in effect on the date of this contract, which may, prior to the completion of deliveries hereunder, be levied, imposed, required, or increased by the United States or any other State thereof or other Governmental agency on or measured in terms of any of the finished products remaining unshipped and which are to be delivered hereunder, or on or measured in terms of any commodity used in the manufacture of such finished products or the containers therefore or commodities used in the manufacture of such containers, or in the processing, purchase, sale, holding for sale, distribution, dealing in, transportation, use or handling of any of such products, commodities, or containers, if paid or borne by Seller directly or indirectly shall be billed separately to Buyer, where not prohibited by law, and where the determination of the amount of the tax, imposition, exaction, charge or increase per cwt, or other unit of measure is possible of calculation by the application of any official published conversion rate or otherwise, and shall be paid by Buyer to Seller. Any of such taxes, impositions, exactions, charges, or increases which the Seller shall be finally relieved from paying or which shall be later refunded or returned to the Seller at any time and for any cause shall be refunded or credited to Buyer by Seller as promptly as possible after deduction by Seller of any reasonable expenses incurred in preventing collection of such taxes, impositions, exactions, charges or increases or in obtaining or securing such refunds or returns and in making such reimbursement to Buyer, and after paying and discharging all tax liabilities to which Seller may be subjected by reason of its having been relieved from paying such taxes, impositions, exactions, charges, or increases or having secured such refunds or returns. Seller shall be under no obligation to contest the validity of any such tax imposition, exaction, charge, or increase or to prosecute any such claims for refunds or returns, but in the event Seller does not elect to contest such taxes, impositions, exactions, charges, or increases, or to prosecute such claims for refunds. Seller shall at Buyer's request assign to Buyer all of Seller's rights and causes of action in the premises, and in such case Buyer shall indemnify and save harmless Seller of and from all liabilities, loss, damages, and expenses, direct or indirect, including attorney's fees, which may arise as a result of such assignment. Without limiting the generality of the foregoing, as used in this paragraph the term "exaction" shall include the direct costs of compliance (excluding overhead and administrative, clerical, and similar expenses) with any statute of the United States or regulation or order issued hereunder restricting or prohibiting, except upon compliance with the terms thereof, the manufacture or marketing of any finished product to be delivered hereunder or any commodity used in manufacturing or preparing the same for delivery, whether compliance therewith shall require the acquisition of so called "marketing certificates" or payment of some type of processing tax or charge, or some other form of payment.

SHIPMENTS: Where the basis of shipment is F.O.B., delivery of goods by Seller to the carrier at point of shipment shall constitute delivery to Buyer, subject to the lien of Seller for the unpaid purchase price. Buyer shall furnish Seller complete shipping instructions (and when required, the necessary containers) at least ten (10) days before the time of shipment. If there is more than one installment of goods shipped or stipulated herein to be shipped, this contract shall be construed to be severable as to each installment, except where such construction would be in direct conflict with the provisions hereinafter set forth under "Rights of Buyer" and "Rights of Seller" and breach or default of either Buyer or Seller as to any installment or installments shall not give the other party a right to cancel this contract, except as herein otherwise expressly provided.

WARRANTY: Seller expressly warrants that any goods contracted herein will be representative of the brand or grade specified herein to be sold and will comply with all of the applicable provisions of the Federal Food, Drug, and Cosmetic Act and of any applicable State Pure Food and Drug Act. Buyer hereby waives any claim or defense based on the quality of the commodities specified herein unless (1) within (10) days after Buyer learns by use or otherwise of the defect complained of, but in any event within (45) days after the receipt of notice of arrival of said commodities at destination. Buyer sends Seller at Seller's main office a letter by registered mail specifying the nature of the complaint, and (2) within said (45) days sends by parcel, post, or express prepaid to Seller's said office a (5) pound sample of the goods alleged to be defective or inferior, provided that compliance by Buyer with the above enumerated steps shall not constitute an admission by Seller of the merits or amount of Buyer's said claim or defense.

RIGHTS OF BUYER: In case of default by Seller (provided that Seller shall, without limitation, be in "default" if Seller becomes insolvent or is adjudged bankrupt, or if at any time the property and assets of Seller are in liquidation, or if Seller's financial responsibility becomes impaired; but that Seller shall not be in "default" for non-performance due to fire, flood, earthquake, tornado, labor difficulties, riot, federal or state laws and regulations, acts or defaults of common carriers, shortage of necessary bulk trucks or bulk railroad cars unless Buyer has furnished Seller with shipping instructions at least twenty (20) days prior to time of shipment, or Act of God or the public enemy). Buyer may (within thirty (30) days after he has knowledge thereof) by written notice sent by registered mail to Seller at Seller's main office:

- 1) cancel the contract; or
- 2) terminate the contract as to the portion thereof in default and purchase within said thirty (30) days an equal quantity of goods of the same kind and grade and recover from Seller the excess of the price so paid over the purchase price named herein, plus any incidental loss or expense, and in addition thereto, recover a sum equal to one percent (1%) of the contract price named herein; or
- 3) terminate the contract as to any unshipped balance, and recover from Seller as liquidated damages a sum to be computed by the following formula: (a) one percent (1%) of the per cwt contract price named herein multiplied by the number of cwts remaining unshipped, plus (b) amount of rise, if any, per bushel in the market value of cash wheat, as the case may be in carload lots at Seller's mill between date of contract and date of termination multiplied by two and thirty-five hundredths (2.35) times the number of cwts remaining unshipped. In case of a decline in the value of such wheat between said dates, Buyer shall recover the sum specified in (a) less the amount of such decline per bushel multiplied by two and thirty-five hundredths (2.35) times the number of cwts remaining unshipped. Such amount shall be credited to the amount provided in (a) solely in reduction of damages.

Provided: That if the default consists of a failure by Seller to ship at the time required, Buyer may cancel or terminate the contract as above provided only after giving Seller preliminary written notice of intention to cancel or terminate by registered mail addressed to Seller's main office. If Seller does not ship within (8) days after mailing of such notice, then Buyer may within thirty (30) days after the expiration of said eight (8) days, cancel or terminate the contract as above provided.

RIGHTS OF SELLER: In case of default by Buyer (provided that Buyer shall, without limitation, be in "default" if Buyer becomes insolvent or is adjudged bankrupt, or if Buyer shall fail to make any payment to Seller when due under this or any other contract between Buyer and Seller, or if at any time the property and assets of Buyer are in liquidation, or if Buyer's financial responsibility becomes impaired, but as to any unshipped balance hereunder Buyer shall not be in "default" for delay in performance due to fire, flood, earthquake, tornado, labor difficulties, riot, federal or state laws and regulations, acts or defaults of common carriers, or Act of God or the public enemy),

- 1) cancel the contract; or
- 2) terminate the contract as to the portion thereof in default or as to any unshipped balance, or both, and
 - (A) resell within said thirty (30) days any of the above goods which have been shipped and which the Buyer has wrongfully failed or refused to accept, and recover from Buyer difference between the above purchase price thereof and the price obtained on resale, if latter be less than former; also any incidental loss or expense, including salesman's time and expense in connection with such resale, and all demurrage (resale anywhere in the usual course of Seller's business or at any terminal market or at or near destination shall be proper and conclusive in the absence of bad faith), and
 - (B) if Seller terminates as to unshipped balance, recover from Buyer as liquidated damages a sum to be computed by the following formula: (a) one-half cent (1/2 ¢) per day for each day from date of contract to date of termination for each cwt remaining unshipped, plus (b) ten cents (10¢) for each cwt remaining unshipped as the cost of selling, plus (c) amount of decline, if any, per bushel in market value of cash wheat, as the case may be, in carload lots at Seller's mill between date of contract and date of termination multiplied by two and thirty-five hundredths (2.35) times the number of cwts remaining unshipped. In case of a rise in such value of such wheat between said dates. Seller shall recover the sums specified in (a) and (b), less the amount of such rise per bushel multiplied by two and thirty-five hundredths (2.35) times the number of cwts remaining unshipped. Such amount shall be credited to the amounts provided in (a) and (b) solely in reduction of damages.

Provided: That if the default consists of a failure by Buyer to provide shipping instructions as required under "Shipments", Seller may cancel or terminate the contract as above provided only after giving Buyer preliminary written notice of intention to cancel or terminate, by registered mail addressed to Buyer's main office. If Buyer does not provide, within eight (8) days after mailing such notice, shipping instructions for immediate delivery of all past due shipments, then Seller may, within thirty (30) days after the expiration of said eight (8) days, cancel or terminate the contract as above provided. Where Buyer furnishes within said eight (8) days' period, such shipping instructions for immediate delivery, Seller shall have at least ten (10) days after receipt thereof within which to ship and shall have such additional time as may in Seller's sole discretion be reasonably necessary, having in mind the Seller's then milling operations and requirements.

PROVISION FOR AUTOMATIC EXTENSION: If Buyer shall fail to furnish complete shipping instructions (and when required, the necessary containers) to reach Seller at his main office ten (10) days before the date for any shipment specified herein, or before the final date specified for shipment, as the case may be, and if Buyer shall fail to notify Seller that he does not intend to accept any further deliveries under this contract, then (unless Seller elects to exercise his right to cancel or terminate the contract) this contract as to such shipment or shipments, shall without notice automatically be extended from day to day until Buyer furnishes complete shipping instructions (and when required, the necessary containers) in accordance with the provisions of paragraph entitled "Shipments" or until Buyer notifies Seller that he does not intend to accept any further deliveries under this contract, or until Seller exercises his right provided herein to cancel or terminate the contract, and for each day during the contract is thus automatically extended, Buyer will pay Seller carrying charges at the rate of one-half cent (1/2 ¢) per cwt per day.

LIMITED OF ACTIONS: No action at law or in equity shall be maintained by Buyer against Seller or any of Seller's other vendees to recover damages for alleged violation by Seller or said vendee of any law, Federal or State, now in effect or hereafter enacted, pertaining to discrimination in price, services, or facilities including the Clayton Act (U.S.C. Title 15, Secs 12 to 27 inclusive as amended by Act of Congress approved June 19, 1936 or any further amendment thereto, as respects any products delivered by Seller to Buyer pursuant to this contract unless (1) written notice of the particular deliveries on which the claim for such damages is based shall be given by Buyer to Seller's main office by registered mail within six (6) months after delivery thereof to Buyer with a full statement of the particulars of such claim then known to Buyer, and (2) action shall be commenced within one (1) year after delivery of such products to Buyer.