

GENERAL TERMS AND CONDITIONS OF SALE FOR SALES OF MEAT, MEAT PRODUCTS, FOOD, AND FOOD RELATED PRODUCTS, BY Kelley Foods of Alabama, Inc. FOR DELIVERY IN THE UNITED STATES (February 2011)

Sales of meat, meat products, food, and food related products (including, without limitation, all beef, pork and poultry and all by-products and rendered products) by Kelley Foods of Alabama, Inc. ("Seller") to a Buyer for delivery in the United States are governed by the following general terms and conditions of sale.

1. **TITLE/RISK OF LOSS.** Unless otherwise specified by Seller in writing, title and risk of loss shall pass to Buyer at the time the products supplied by Seller ("Products") are placed in the possession of Buyer or Buyer's agent or carrier.
2. **WARRANTY.** Seller warrants that it has the right to convey good title to the Products. Seller further warrants that, as of the time and place of shipment hereafter made by Seller, the Products shall not be adulterated or misbranded within the meaning of the U.S. Federal Meat Inspection Act, as amended ("FMIA") (if applicable), the U.S. Poultry Products Inspection Act, as amended ("PPIA") (if applicable), and/or the U.S. Federal Food, Drug and Cosmetic Act, as amended ("FDCA") (if applicable).
3. **NO OTHER WARRANTIES. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN SECTION 2, SELLER DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.** The parties acknowledge that many of the Products are subject to extensive and exclusive U.S. federal regulation and that such federal regulation often preempts, and thus makes inapplicable, state and local laws.
4. **LIMITATION ON DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, OR TO ANY OTHER PERSON OR ENTITY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF WHATSOEVER NATURE (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, LOST PROFITS, DAMAGE TO GOODWILL OR REPUTATION AND/OR DEGRADATION IN VALUE OF BRANDS, TRADEMARKS, TRADENAMES, SERVICE NAMES OR SERVICE MARKS), WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION, OR OTHERWISE. BUYER ASSUMES ALL RISKS AND LIABILITIES FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE USE OR SUBSEQUENT SALE OF THE PRODUCTS, EITHER ALONE OR IN COMBINATION WITH OTHER PRODUCTS.**
5. **EXCLUSIVE REMEDIES.** Buyer's exclusive remedy and Seller's exclusive liability for shipment of nonconforming Product, including for breach of warranty, is expressly limited, at Seller's option, to (i) replacement, within a reasonable period of time, of the nonconforming Product at no additional charge to Buyer (ii) refund of the purchase price. All nonconforming Product must be returned to Seller, at Seller's expense, or, at Seller's direction, disposed of by Buyer in a manner mutually acceptable to Buyer and Seller with all reasonable costs of such disposition to be paid by Seller. **BUYER EXPRESSLY AGREES THAT THE REMEDIES GRANTED TO IT HEREUNDER ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO ANY CLAIM OF BUYER ARISING IN CONNECTION WITH THE PRODUCTS.**
6. **FORCE MAJEURE.** Seller shall not be liable to Buyer for failure of or delay in performance when such failure or delay is caused by conditions beyond Seller's control including, but not limited to, war, strike, labor dispute, fire, flood, tornado, hurricane, government intervention, embargo, terrorism, shortage of raw materials (including, without limitation, shortage resulting from inadequate livestock or poultry supply or from grade changes resulting from variations in livestock or poultry supply), breakdown, shortage or non-availability of transportation facilities or equipment of any Act of God. If Seller declares force majeure hereunder, the contract shall remain in force and effect for a period of sixty (60) days from said declaration. After the expiration of said sixty (60) days, Seller may cancel any unperformed portion of the contract by written notice to Buyer.
7. **CLAIMS.** Before or upon tender of delivery of Products, Buyer will provide immediate telephone notification to seller of any alleged Product nonconformity, including any off-condition product, shortage or any other discrepancy or situation which may impair the value of the products or justify payment of less than the amount billed. This notification will be made to Seller's Sales Department at the following telephone number for the Seller: Kelley Foods of Alabama, Inc., (Distribution Division,) 334-897-5761 x124; Kelley Foods of Alabama, Inc.(Manufacturing Division) 334-897-5761 x108. If notice is not so made within twenty-four (24) hours of tender of delivery of Products, then Buyer accepts the Products as conforming in all ways and will submit to Seller full payment therefore on or before the agreed upon date. Within seven (7) days after telephone notification described above, if any, Buyer will send a detailed written confirmation thereof and will attach all documents relevant thereto. All correspondence and documents must be addressed to: Sales Department, Kelley Foods of Alabama, Inc., P.O. Box 708, Elba, Alabama 36323-0708. Any payment for less than the billed amount

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must be authorized by Seller's Sales Department in advance by assignment of a credit/claim number. The assignment of a credit/claim number to Buyer by Seller's Sales Department or acceptance by Seller of a partial payment from Buyer shall not constitute final approval of Buyer's Claim or be a waiver of any Buyer's obligations or Seller's rights.

8. **DELIVERY.** If the contract provides for deliveries over a period exceeding one (1) month, Seller shall not be obligated to deliver in any thirty (30) day period more than approximately equal monthly quantities, in relation to the total amount of the contract, and Seller may make shipments of the total amount in such equal monthly quantities.

9. **SHIPPING INSTRUCTIONS.** Buyer shall furnish complete shipping instructions and provide adequate credit as determined by Seller's Credit Department at the time of order and delivery to enable Seller to perform its obligations. Seller shall not be obligated to make shipment in absence thereof. If more than one delivery is called for, each delivery is to be considered a separate contract for the purposes of Buyer furnishing complete shipping instructions and adequate credit.
10. **ROUTING.** The destination routing of shipments and carrier selection will be at Seller's option. Delivery dates provided by Seller are estimates only.
11. **INSTALLMENT CONTRACT.** In the event the contract is deemed or interpreted to be an installment contract, the failure of Seller to ship or deliver any installment when due will not substantially impair the value of the contract as a whole and will not constitute a breach of the contract as a whole. In the event of any non-delivery of an installment by Seller, Buyer's exclusive and sole remedy shall be limited to delivery of the Products as soon as Seller can reasonably do so.
12. **PRICE AND PAYMENT.** The price is always in United States Dollars and must be paid in United States Dollars regardless of any fluctuations in the currency of other countries. All remittances must be submitted according to invoice terms. All sales are subject to approval of Seller's Credit Department. Buyer shall be responsible for the payment of any federal, state or local sales, use or other taxes upon or with respect to the sale, purchase, use, receipt or shipment of the Products.
13. **CREDIT TERMS.** Buyer shall pay Seller's invoices in full within terms of each invoice. Should the financial responsibility of Buyer at any time become unsatisfactory to Seller, Seller shall have the right to suspend performance of any order or require payment for any shipment in advance or require satisfactory security or other adequate assurance satisfactory to Seller. If Buyer fails to make payment in accordance with Seller's payment terms or fails to comply with any provision of any agreement between Buyer and Seller, Seller may at its option, in addition to any other remedies, cancel any unshipped portion of Buyer's order, and Buyer will remain liable for all unpaid accounts. In the event Buyer fails to make payment in accordance with Seller's payment terms, the account shall be deemed to be delinquent and a service charge of 1½ % per month or 18% per annum, charged weekly, will be made on the unpaid balance.
14. **QUANTITY.** Ordered weight/box count is shipped at plus or minus 5% at Seller's option unless otherwise specified by Seller in writing.
15. **DEFAULT.** If Buyer (1) fails to furnish shipping instructions within the time specified, (2) fails to order any shipment within the time specified therefor, (3) fails to supply adequate credit within the time specified, (4) refuses to accept any shipment properly tendered, (5) fails to tender any payment when due, or (6) fails to perform in any other respect according to its obligations set out in the terms herein (each of which shall be a material breach of the contract), Seller may treat such default as (a) a total breach of the entire contract, or (b) a breach only as to the individual shipment or installment, and, in addition to any other rights or remedies which Seller may have at law or in equity, Seller may (x) cancel the contract, (y) terminate the contract as to the portion thereof in default or as to any unshipped balance, or both, and/or (z) resell, after ten (10) days notice to Buyer, any of the Products which have been shipped and which Buyer has wrongfully failed or refused to accept, and receive from the Buyer the difference between the contract price thereof and the price obtained on resale if the latter be less than the former, as well as any incidental loss and expense. All rights and remedies of Seller shall be cumulative and not exclusive of any other rights or remedies which Seller would otherwise have at law or in equity.
16. **DISCLOSURE OF INCENTIVES.** Seller may receive discounts, allowances, and rebates; and may participate in programs (including, without limitation, promotional, growth, performance, marketing, volume purchasing, and adjusted pricing programs) in which Seller may receive allowances (including, without limitation, promotional allowances, marketing allowances, earned distributor allowances, and/or supplier pool allowances), rebates, incentives, and discounts (collectively "Incentives") from manufacturers, suppliers, vendors, or others. Such incentives are considered collateral fees earned by the Seller for providing such services as, but not limited to, sales and marketing services, promotions, food shows, achievement of volume objectives, product and brand development, and costs associated with bringing products to the commercial marketplace.
17. **ASSIGNMENT.** The rights and obligations under the contract, including these terms and conditions, are not assignable by Buyer unless in writing and signed by both parties.
18. **TERMS TO GOVERN.** These terms and conditions shall govern in any instance where they conflict with provisions of forms used by Buyer. No prior contemporaneous negotiations, correspondence, conversations, prior course of dealing or usage of trade shall be deemed in any way to affect the specific terms hereof. These terms and conditions shall be binding on Buyer even if not signed by Buyer.
19. **LIFE OF CONTRACT RIGHTS.** The Contract, including these terms and conditions, shall be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, administrators, executors, successors, and permitted assigns.
20. **ARBITRATION.** Except for any injunctive relief sought by either party, any dispute, controversy, or claim arising out of or in connection with this Agreement will be settled by binding arbitration in Alabama, in accordance with the applicable rules for expedited review of (and by an independent arbitrator selected by) the American Arbitration Association, and the decision of such arbitrator, including any award of attorney's fees and costs, may be entered in any court of competent jurisdiction.
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21. **GOVERNING LAW.** The contract including these terms and conditions, shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of law rules. Any action brought pursuant to the contract, including these terms and conditions, shall properly (but not exclusively) lie in any federal or state court located in the State of Alabama, County of Coffee.

22. **ATTORNEY FEES, COSTS.** In the event that either party hereto commences an action to enforce the terms of this agreement, the prevailing party shall be entitled to recover all of its cost of such action relating to those claims upon which such party prevailed, including reasonable attorney fees, from the non-prevailing party.
23. **ALTERATION OF TERMS/WAIVER.** Subject to right of Seller to add to, modify supersede, alter or revoke these terms and conditions upon written notice to Buyer, none of the terms and conditions contained herein may be added to, modified or superseded, or otherwise altered, unless in writing and signed by both parties, and specifically referring to these terms and conditions. Waiver of any default must be in writing signed by both Buyer and Seller and shall not constitute waiver of any subsequent default.
24. **SEVERABILITY.** The provisions of the contract, including these terms and conditions, shall be deemed to be severable and the invalidity or partial invalidity of any provision hereof shall not affect the validity or enforceability of the remaining provisions.
25. **LIMITATION ON ACTIONS.** No action arising out of the contract, including these terms and conditions, may be brought by Buyer more than one (1) year after the cause of action has accrued.
26. **NO RIGHTS OF THIRD PARTIES.** The contract, including these terms and conditions, is solely for the benefit of Buyer and Seller, and no provision of the contract shall confer upon third parties any right or remedy.