

This order is an offer to buy the goods specified in the purchase order upon the following additional terms and conditions.

1. **Acceptance of Purchase Order**. Seller agrees to provide the goods described in any purchase order ("Goods") in accordance with the applicable purchase order and with these Terms and Conditions ("Agreement"). Seller shall accept a purchase order by promptly shipping conforming Goods in accordance with this Agreement. Upon acceptance of the purchase order, Seller shall be bound by the provisions of this Agreement, including, without limitation, all provisions set forth on the face of any applicable purchase order, whether or not Seller acknowledges or otherwise signs this Agreement or the purchase order. This writing does not constitute a firm offer within the meaning of Section 400.2-205 of the Uniform Commercial Code. Sales, as adopted in Missouri, and may be revoked at any time prior to acceptance. This Agreement may not be added to, modified, superseded or otherwise altered, except by a writing signed by an authorized representative of Buyer. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller, which are inconsistent with the terms and conditions of the Agreement, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of any prior offer of Seller, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods by Seller shall constitute such assent. Acceptance of Goods by Buyer is expressly limited by Seller's assent to the terms and conditions stated in the Agreement and Buyer objects to the inclusion of any different or additional terms proposed by Seller.

2. **Delivery of Goods**. Time is of the essence in the performance of this Agreement and as otherwise directed by Buyer. Unless otherwise provided on the applicable purchase order, (a) Goods subject to the Perishable Agricultural Commodities Act shall be delivered "delivered sale" as defined in 7 Code of Federal Regulations §46.43(p) and (b) all other Goods shall be delivered F.O.B. destination. In the event Seller fails to deliver the Goods within the time specified, Buyer may, at its sole option, reject the Goods in whole or in part and terminate the Agreement in whole or in part. Seller shall package all Goods in suitable containers to permit safe transportation, handling and storage. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing sheets listing contents. Buyer's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading. Buyer hereby reserves the right to reschedule in whole or in part any delivery or cancel any purchase order in whole or in part so long as Seller is notified of such cancellation at any time prior to shipment of the Goods. Buyer shall not be subject to any charges, costs or other fees as a result of such cancellation. If it is necessary to part-ship any order, any additional freight charges which may arise as a result of such partial shipment will be borne by Seller. Upon Buyer's request, Seller shall promptly provide statement of origin for all Goods and United States Customs documentation for all Goods wholly or partially produced outside the United States. The timing, location and manner of delivery of Goods shall be in a manner which shall cause minimal disruption of Buyer's business operations. All Goods delivered to one of Seller's warehouse facilities shall comply with Seller's Warehouse

Vendor Compliance Policy, the most current version of which can be located at <https://nourish.schnucks.com/Warehouse-Vendor-Compliance-Policy/>.

3. **Acceptance of Goods**. Payment for Goods does not constitute acceptance. Buyer shall have the sole right, by reasonable inspection, to determine (a) the merchantable condition of the Goods and (b) any overages or shortages. Notwithstanding the foregoing, Seller shall have tendered the Goods to Buyer at delivery solely for the purposes of UCC § 2-503. Defective, non-conforming or other rejected Goods may be returned to Seller and Seller will reimburse Buyer for all costs incurred in connection therewith including but not limited to the purchase price paid for such Goods, inspection costs, transportation costs and handling costs (both ways). Goods rejected before delivery or returned as defective or non-conforming shall not be replaced except upon Buyer's written order. Within five (5) business days of receipt of the returned Goods, Seller shall, at Buyer's option, either repair or replace such Goods, or credit Buyer's account for the same. Replacement and repaired Goods shall be warranted as original Goods' Buyer, at its sole option, may reject shipments or partial shipments of Goods if those Goods are defective or non-conforming. Goods that are the subject of a Food and Drug Administration ("FDA") or Seller initiated recall or withdrawal are automatically deemed defective. Additionally, in the event that the FDA, the Centers for Disease Control and Prevention or any other governmental agency responsible for food safety advises or issues guidance that Goods are, or may be, unsafe for consumption, the Goods shall be automatically deemed defective even though a formal recall is not initiated.

4. **Rejection of Delivery**. Buyer reserves the right to reject any delivery that cannot be unloaded safely or without damage to other non-Buyer goods. Examples include Goods not being properly secured to pallets, the floor of the vehicle not being able to withstand a pallet jack completely laden, or non-Buyer goods located between the Goods and vehicle doors that will be used for unloading. Buyer shall have no liability to either Seller for rejecting a load that cannot be unloaded safely or any third-party for damage to non-Buyer goods should such goods need to be moved in order for Buyer to accept delivery. By acceptance of any purchase order, Seller acknowledges it is responsible for communicating this provision to its carrier(s).

5. **Pricing and Payment**. The price for Goods and payment thereof shall be as set forth on the face of each purchase order. The prices of the Goods delivered hereunder, and any discounts or allowances therefrom, are inclusive of applicable taxes, freight, packaging, insurance, handling and all other charges, whether similar or dissimilar, unless otherwise indicated by Seller on the face of the purchase order. Seller shall be responsible for all carrier charges, including sorting, segregation, notification and all other similar charges. Notwithstanding anything to the contrary contained in this Agreement, the purchase price for Goods shall be no higher than the price at which Seller sells like Goods in like quantities to any other purchaser.

6. **Invoices**. Separate invoices must be rendered for each purchase order. If a purchase order is divided into more than one shipment, separate invoices must be rendered for each shipment. Invoices shall be sent to the bill to address on the face of

the purchase order. Each invoice, shipping notice, bill of lading, freight bill and correspondence shall show the purchase order number and shall separately list the Goods invoiced, quantities, unit prices and taxes (if applicable) and shall state "Tendered to buyer in lots according to brand, size and flavor." Any cash discount period available to Buyer shall commence on the later of the receipt of an invoice that meets the requirements of this Agreement or the date of acceptance of conforming Goods. Buyer shall be under no legal, contractual or other obligation of any kind to pay any invoices of Seller, its subcontractors or vendors, physically received by Buyer more than ninety (90) days after delivery of the Goods to which such invoice relates and any such failure to pay shall not be deemed a default under the terms of this Agreement. Claims disputing Buyer's inventory adjustments made for overages, shortages, damaged product and refused product must be made within ninety (90) days of Buyer's receipt of Goods. Failure to submit claims according to the timeframe in the foregoing sentence may be refused by Buyer at its sole discretion.

7. **Warehousing (if applicable)**. To facilitate efficient operations of its various warehouse facilities, Buyer has established certain policies and procedures, including, but not limited to, scheduling of deliveries, palletization requirements, and hazardous materials. All Goods delivered to any of Seller's warehouse facilities shall comply with Seller's Warehouse Vendor Compliance Policy, the current version of which can be located at <https://nourish.schnucks.com/wp-content/uploads/2020/06/200626.2-Schnucks-Warehouse-Vendor-Compliance-Policy.pdf>

8. **Store Merchandising and Reset Fee**. Buyer leverages a merchandising service provider in order to enhance customers' experiences and increase the merchandising impact of Seller's products. All Goods that are delivered to any of Buyer's warehousing facilities and certain Goods that are delivered directly to Buyer's store(s) will be charged a fee of 0.6% of the monthly net purchase amount (invoiced amount less all applicable discounts and credits) invoiced to Buyer, which fee will be deducted from one or more of Seller's invoices on a monthly basis.

9. **New Locations**. By acceptance of a Purchase Order, Seller acknowledges and agrees that Buyer, at its option, may deduct the cost of one case/pick per SKU for each new store that Buyer opens. Such deduction shall occur within 90 days of the store's opening date.

10. **Risk of Loss**. The Goods are identified and Buyer obtains an insurable interest therein upon issuance of the purchase order. However, title to the Goods and risk of loss thereof shall not pass from Seller to Buyer until acceptance of the Goods by Buyer as provided in this Agreement.

11. **Shipment by Buyer**. If Buyer and Seller enter into an agreement where Buyer transports the Goods from the point of manufacture or Seller's distribution point ("CPU"), the CPU shall control in the event of a conflict between the CPU and this Agreement.

12. **Seller's Representations and Warranties**. In addition to all other express or implied warranties of Seller, Seller represents and warrants that all Goods delivered

hereunder: (a) are in a merchantable condition and not defective as referenced in Section 3 above and conform to samples, descriptions and specifications included or referred to in the Agreement and will be saleable as goods that so conform after receipt by Buyer; (b) are not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, with all revisions and amendments pertaining thereto, to the extent said Act is effective and applicable, and are not an article which may not, under the provisions of Section 404 or 505 or said Act, be introduced into interstate commerce; (c) are produced, handled, transported and/or imported, as the case may be, in accord with standards that meet or exceed those required by the Federal Food Safety Modernization Act (“FSMA”) and all applicable regulations promulgated thereunder; (d) if imported from a “foreign supplier,” Seller shall be the “importer” for purposes of the Foreign Supplier Verification Rule of FSMA (in such case, Seller agrees to have an effective foreign supplier verification program in place; to never name Buyer as “importer,” “importer of record,” or any other similar designation with U.S. Customs and Border Protection, or any other governmental agency; and to never utilize Buyer’s DUNS number on any documentation associated with the imported goods); (e) do not contain any asbestos, polychlorinated biphenyls (PCBs), lead, lead paint, mercury, or any other hazardous material of any type; (f) have been manufactured in conformity with both State and Federal laws applicable to wages and hours and that no person was employed in the production of the Goods who is under the minimum age limits prescribed by State and Federal law; (g) are of good and fresh quality meeting all applicable government standards, including but not limited to shelf life; and (h) do not infringe upon any patent, trademark, tradename, service mark or other intellectual property rights of a third party, whether registered or unregistered. Additionally, the Goods shall be subject to all written and oral express warranties made by Seller’s agents, and to all warranties provided for by the Uniform Commercial Code. Sales, as adopted in Missouri. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Buyer Seller’s standard warranty and guaranty applicable to the Goods. All warranties and guaranties shall run both to Buyer and to its customers and all end users or consumers of the Goods. Inspection, opportunity for inspection or acceptance of Goods by Buyer shall neither terminate nor waive Seller’s warranties. Seller shall not be responsible for loss resulting from the negligence of the Buyer in the storage and handling of Goods delivered hereunder.

13. **Confidentiality**. Seller shall keep confidential all confidential and/or proprietary information concerning Buyer that is furnished by Buyer to Seller in connection with this Agreement, including, but not limited to, the existence and contents of this Agreement, any information regarding Buyer’s products, projects, business, plans, programs, plants, retail or wholesale facilities, processes, equipment, costs, customers and operations and any other information, which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary (collectively, “Confidential Information”). Without Buyer’s prior written consent, Seller will not disclose nor will it permit Seller’s representatives to disclose any Confidential Information to any persons other than who have a need to know such information in connection with performing its obligations under this Agreement. The obligations of Seller to keep confidential any Confidential Information shall continue beyond the termination, expiration or lapse of this Agreement

until such Confidential Information comes into the public domain through no omission or unauthorized act of the Seller. Confidential Information shall not include information that is (a) or becomes publicly available other than as a result of a breach of this Agreement by Seller or its representatives; (b) furnished or made known to Seller by third parties (other than those acting on behalf of Buyer) reasonably understood to have the right to disclose such information without restriction on disclosure or use; (c) legitimately in Seller's possession prior to disclosure by Buyer or (d) developed by Seller without reference to the Confidential Information. If Seller is requested or becomes legally compelled to disclose any Confidential Information, Seller shall provide Buyer with prompt Notice of the request or requirement so that Buyer may seek a protective order or other appropriate remedy. If such order or other remedy is not obtained, Seller agrees to furnish only that portion of the Confidential Information as it is advised by counsel is legally required to be disclosed and to exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded the Confidential Information. The parties acknowledge that the breach of this Section 13 by one party may give rise to irreparable injury to the other party which is not adequately compensable in damages or at law. Accordingly, the parties agree that injunctive relief may be an appropriate remedy to prevent violation of either party's respective rights or obligations under this Section 13.

14. **Non-Solicitation**. During the term of this Agreement and for a period of one (1) year following its termination, neither party shall, as a result of becoming aware of any employee of the other party who is connected with the performance of this Agreement, directly or indirectly solicit such employee; provided that neither party shall be precluded from hiring any employee who: (a) initiates discussions regarding such employment without any direct or indirect solicitation, (b) responds to any general, public advertisement, or (c) has been terminated by the other party prior to commencement of employment discussions.

15. **Indemnification/Damages**. Seller shall indemnify, hold harmless and at Buyer's request by counsel reasonably satisfactory to Buyer, defend Buyer and its officers, directors, shareholders, customers, agents and employees, against any and all liabilities, claims, losses, damages, fines, penalties, costs and expenses, including, without limitation, attorneys' fees and costs, arising from or related to (a) any breach of a representation or warranty by Seller contained in this Agreement, (b) failure to observe any covenant of Seller contained in this Agreement, (c) or otherwise caused by the Goods or by any act or omission of Seller, its employees, representatives or agents, (d) regardless of the legal theory or the ultimate validity of the claim, any claim based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean-up costs, (e) Seller failing to satisfy the Internal Revenue Service's guidelines for an independent contractor, (f) any claim based on the negligence, omissions or willful misconduct of Seller, its employees, officers or agents, or (g) any claim by a third party against Buyer alleging that the Goods infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party or violate any law or regulation. Seller shall not settle any such suit or claim without Buyer's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Buyer in enforcing this indemnity, including without

limitation attorneys' fees. Inspections or opportunity for inspection by Buyer shall not relieve Seller of its indemnity obligations under this Section 15. In addition to the indemnification provisions above, Seller shall promptly reimburse Buyer for any damages, including direct and indirect damages, which Buyer incurs as a result of Seller's breach of this Agreement.

16. **Subordination**. Seller hereby subordinates any presently existing or hereafter arising security interest it may have in the Goods (whether a purchase money security interest or otherwise) to the security interests now or hereafter granted by Buyer to its lenders in the ordinary course of Buyer's business, to the extent the Goods constitute collateral or other security granted to such lenders in connection therewith.

17. **Audit**. Seller agrees to allow Buyer or a third party auditor retained by Buyer to analyze appropriate records of Seller to ensure compliance with all the terms of this Agreement. Any such audit may commence within three (3) days of Seller's receipt of Notice from Buyer to audit during normal business hours. The cost of any audit shall be borne by Buyer unless material default in contract compliance is discovered, in which event the audit cost shall be borne by Seller. Audits shall not unreasonably interfere with Seller's business operations.

18. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of laws principles. Buyer and Seller expressly opt out of the provisions of the United Nations Convention on Contracts for the International Sale of Goods and elect the provisions of the Uniform Commercial Code, as adopted by the State of Missouri and amended from time to time, to govern this Agreement. To the extent not inconsistent herewith, Article 2 of the Uniform Commercial Code shall supplement this Agreement.

19. **Prevailing Party**. In the event a party commences legal action to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, not as damages, reasonable attorney's fees and costs to be fixed by the court.

20. **Dispute Resolution**. Buyer and Seller shall attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement through discussions between the executive(s) of Buyer and Seller responsible for this Agreement. If these discussions are unsuccessful, the parties agree that any legal action or proceeding with respect to this Agreement will be brought either in the state court of St. Louis County, Missouri or the Federal District Court of the United States of America for the Eastern District of Missouri located in the City of St. Louis and by execution and delivery of this Agreement, each party hereby consents to the jurisdiction of the aforesaid courts solely for the purpose of adjudicating its rights with respect to this Agreement or any document related thereto. Each party hereby consents to service of process by certified mail and irrevocably waives any objections to the sufficiency of any service which is given in such manner. The parties further agree to waive any right to a jury trial that either party might otherwise have in any and all courts. Notwithstanding anything to the contrary contained

herein, Buyer may assert any claim to enforce its rights pursuant to Section 12, 13, or 15 in any court of competent jurisdiction.

21. **Notices.** To the extent notice is required or the parties are required to respond via written communication (collectively, "Notice"), such Notice shall be sent: (a) by certified mail, postage prepaid, return receipt requested, with such notice deemed to have been given upon the third business day after posting in the United States Mail; or (b) by national delivery service guaranteeing overnight delivery, with such notice deemed to have been given upon the next business day; or (c) by facsimile transmission, provided a confirmation copy is sent via one of the other methods provided herein to the addresses provided below, with such notice deemed to have been given upon receipt of the facsimile transmission. Notices to Seller shall be delivered to the address or facsimile number set forth on the purchase order and if not set forth in the purchase order, at the address of Seller reflected in Buyer's records. Notices to Buyer shall be sent to Buyer's purchasing representative listed on the Purchase Order at: Schnuck Markets, Inc. 11420 Lackland Road St. Louis, Missouri 63146 with a copy to: Schnuck Markets, Inc. 11420 Lackland Road St. Louis, Missouri 63146 Attention: Chief Legal Officer, Phone No. (314) 994-4134, Fax No. (314) 994-4412 Email: mmoorkamp@schnucks.com.

22. **Entire Agreement.** The Agreement, along with Buyer's Warehouse Vendor Compliance Policy, Buyer's Vendor's Recall Policy, and Buyer's policies regarding reasonable requests for information as is needed to comply with FSMA and other federal, state, and local food safety laws and regulations, constitutes the entire written expression of all terms of the parties' agreement, and supersedes all proposals, oral and written, and all other communications between the parties, in relation to the subject matter of this Agreement.

23. **Amendment.** No amendment of this Agreement shall be effective unless reduced to writing signed by an authorized representative of Buyer.

24. **Severability.** If any term or provision of this Agreement is invalid or unenforceable under any applicable statute, regulation, ordinance, executive order or other rule of law, such term or provision shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, executive order or rule, and the remaining provisions of this Agreement shall remain in full force and effect.

25. **Assignment.** The rights and obligations of Seller hereunder may not be assigned, delegated or transferred without the prior, express, written consent of Buyer's authorized representative.

26. **Counterparts; Facsimile Signatures.** A purchase order may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. Notwithstanding anything to the contrary contained in this Agreement, a purchase order may also be signed and transmitted by facsimile, PDF, or other electronic means, with such signature to be treated as an original and the

document transmitted to be considered to have the same binding effect as an original signature on an original document. At the request of either party, any facsimile, PDF, or electronic document will be re-executed in original form by the parties who signed the facsimile, PDF, or electronic document.

27. **No Waiver**. The failure of any party, in any instance, to insist on strict compliance of any of the terms of this Agreement, or to exercise any right or privilege herein conferred, shall not be construed as waiving any such terms, conditions, rights or privileges but the same shall continue to remain in full force and effect. No course of dealing between the Buyer and Seller or usage of trade shall modify this Agreement or be deemed a waiver of either party of their rights pursuant to the express provisions of this Agreement.

28. **Independent Contractor**. In entering into and complying with this Agreement, Seller is at all times performing as an independent contractor. Nothing in this Agreement shall constitute or be construed as the creation of an agency, employment, partnership or joint venture between Seller and Buyer.

LAST UPDATED 07/21/20