

GOLD CREEK PROCESSING, LLC – TERMS AND CONDITIONS OF SALE (CREDIT APPLICATION)

Price / Payment Terms. The price to be paid by Buyer for the goods that are the subject of this Agreement (the “Goods”) shall be set forth on Seller’s invoice. The Buyer shall pay all amounts due and owing under each invoice within ten (10) days from the date thereof (“Net 10 Days”). All payments shall be in U.S. dollars and made by check or electronic transfer. Except for invoiced payments that the Buyer has successfully disputed in accordance with the procedures set forth below, all late payments shall bear interest at the lesser of (i) one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) and (ii) the highest amount permitted by law. The Buyer shall also reimburse Seller for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available to Seller (whether under this Agreement or otherwise according to law or in equity, which Seller does not waive by the exercise of any rights hereunder), the Seller shall be entitled to suspend the provision of any services and/or the delivery of any products if the Buyer fails to pay any undisputed amounts when due and such failure continues for ten (10) days following written notice thereof.

Shipping, Insurance, and Other Costs; Delivery. The price indicated on Seller’s invoice is exclusive of transportation costs, insurance, custom duties, and other fees. All such costs shall be for the Buyer’s account and the Buyer agrees to pay such costs. Delivery shall be F.O.B. Seller’s facility (the “Delivery Point”).

Taxes. Prices are further exclusive of all sales, use, or excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Buyer. Any such taxes, duties and charges currently assessed or which may be assessed in the future, that are applicable to such sales are for Buyer’s account, and Buyer hereby agrees to pay such 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 assets.

Disputes Regarding Invoice. The quantity of any installment of Goods as recorded by Seller on the invoice is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Buyer shall notify the Seller in writing of any dispute with an invoice (along with substantiating documentation (to the extent available) and

a reasonably detailed description of the dispute) or of any other shipping discrepancies within twenty-four (24) hours from the Buyer’s receipt of such invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Buyer as true and correct, and the Buyer shall pay all amounts due under such invoices within the period set forth hereinabove. The parties shall seek to resolve all disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer and Seller shall each continue performing its respective obligations under this and any other agreement between them during any such dispute, including, without limitation, payment by the Buyer of all undisputed amounts due and payable to Seller. The Buyer shall not withhold payment of any amounts due and payable under this or any other agreement with Seller by reason of any setoff of any claim or dispute with the Seller, whether relating to the Seller’s breach, bankruptcy, or otherwise.

Inspection of Goods. Buyer shall inspect the Goods within twenty-four (24) hours of receipt (the “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 and furnishes such written evidence or other documentation as required by Seller. “Nonconforming Goods” means only the following: (i) product shipped is different than identified in the invoice; or (ii) product’s label or packaging incorrectly identifies its contents. 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. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, provide the replacement Goods to a new Delivery Point designated by Seller in the manner contemplated hereinabove. Buyer acknowledges and agrees that the remedies set forth herein are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided hereinabove, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased hereunder to Seller.

Limited Warranties. Seller guarantees, represents, and warrants to Buyer the following at all times: (a) the Goods will not be adulterated or misbranded within the

meaning of: (i) the Federal Food, Drug and Cosmetic Act, as amended, and all U.S. Department of Agriculture (USDA) rules and regulations promulgated thereunder; (ii) the Federal Meat Inspection Act, as amended, and all rules and regulations promulgated thereunder; (iii) the Poultry Products Inspection Act, as amended, and all rules and regulations promulgated thereunder; (iv) any similar state or local laws, and all rules and regulations promulgated thereunder; (v) or within the meaning of any other federal, state or local laws or regulations; (b) the Goods will not be adulterated, misbranded or improperly packaged, within the meaning of the terms of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and all rules and regulations promulgated thereunder; and (c) the Goods will not be a misbranded hazardous substance or a banned hazardous substance within the meaning of the Federal Hazardous Substances Labeling Act, as amended, and all rules and regulations promulgated thereunder. EXCEPT FOR THE FOREGOING WARRANTIES, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR 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.

The Seller shall not be liable for a breach of the warranties set forth hereinabove unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within twenty-four (24) hours 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.

The Seller shall not be liable for a breach of the warranties set forth hereinabove if: (i) Buyer makes any further use of such Goods after giving such notice or (ii) the defect arises because Buyer failed to follow industry practice as to the storage and/or handling of the Goods.

Subject to the provisions hereof, with respect to any Goods allegedly in violation of the warranties given

herein, Seller shall, in its sole discretion, either: (i) replace such Goods 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.

THE REMEDIES SET FORTH HEREIN SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH HEREIN.

Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, 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.

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 OR DELIVERED HEREUNDER.

Applicability. The terms and conditions of sale contained herein (the "Terms") are the only terms which govern transactions between Buyer and Seller. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the transaction evidenced hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. This Credit Application and Agreement, together with these Terms and the terms stated on or incorporated in any invoice of Seller, comprise the entire agreement between the parties (the "Agreement"), 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.

Governing Law; Forum Selection. This Agreement shall be construed in accordance with and governed by Georgia law without giving any effect to any choice or conflict of law provision. Any legal suit, action or proceeding arising out of or relating to transaction(s) evidenced hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Georgia in each case located in the City of Dawsonville and County of Dawson, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Waiver. No waiver by Seller of any of the provisions hereof 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 herefrom 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.

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. 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.

Force Majeure. The 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), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

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.

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.

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.

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 or invalidate or render unenforceable such term or provision in any other jurisdiction.

Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.