

## LUNDBERG FAMILY FARMS STANDARD TERMS AND CONDITIONS OF SALE

Except as otherwise set forth in a written sales agreement (a "Sales Contract"), if any, executed by Wehah Farm, Inc. d/b/a Lundberg Family Farms, a California corporation, or any of its affiliates ("Lundberg") and a purchaser of the Lundberg's products (a "Buyer"), these terms and conditions govern all sales of products ("Products") by Lundberg to Buyer regardless of whether Buyer purchases Products through the medium of a Sales Contract, or through written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from Lundberg and/or Buyer relating to the Products (collectively or individually, an "Order"). "Sales Terms" shall refer to these terms and conditions as amended from time to time.

**Agreement.** Lundberg's acceptance of any Order is expressly subject to Buyer's assent to each and all of the terms and conditions set forth in these Sales Terms. Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's failure to submit written objection thereto, or from Buyer's acceptance of all or any part of the goods ordered.

**Order of Precedence.** No addition to or modification of these terms and conditions shall be binding upon Lundberg unless specifically agreed to by Lundberg in writing. If the Order or other correspondence contains terms or conditions contrary to or in addition to the terms and conditions contained in these Sales Terms, acceptance of any Order by Lundberg shall not be construed as assent to such contrary or additional terms and conditions, or constitute a waiver by Lundberg of any of the terms and conditions contained herein. In case of conflict with any other document, these Sales Terms shall control. Any reference to the Buyer's purchase order or any other documents by Lundberg shall not affect or limit the applicability of the terms and conditions contained herein.

**Packaging.** Lundberg shall comply with industry packaging standards applicable to the method of transportation used for each Order. Acceptance of any special palletizing or packaging requests will be at the discretion of Lundberg, and, if accepted, all additional costs for such palletizing and/or packaging shall be the Buyer's responsibility.

**Ordering Quantities.** Pallet configuration and quantities of each Order must meet any requirements set forth in the Lundberg price list in effect at the time the Order is accepted. Lundberg reserves the right to increase or decrease Order quantities to achieve any full tier quantity requirements applicable thereto. Any such modifications to Order quantities may be made without prior notice to Buyer and Buyer shall not impose any penalty for over (under) shipping with respect to such Order.

**Transportation.** Lundberg will use reasonable efforts to comply with Buyer's requests as to method of transportation, but Lundberg reserves the right to use an alternate method of transportation, whether or not at a higher cost to Buyer, if the

method specified by Buyer is deemed by Lundberg to be unavailable or otherwise unsatisfactory. In any such case, Lundberg shall promptly notify Buyer of such change. Any agreed delivery date indicated in a Sales Contract or Order is estimated but is not guaranteed. Lundberg will endeavor to meet the delivery date specified by Buyer. If Lundberg is unable to meet that date, Buyer has no claim for damages resulting from any such delay in delivery.

**Price.** Unless otherwise specified (a) all prices, quotations, shipments and deliveries by Lundberg are F.O.B. Richvale, California; (b) all Orders are accepted subject to Lundberg's then-current published list price, including all applicable base prices, related extras and deductions; (c) all agreed upon freight charges are the responsibility of Buyer. Orders are not binding upon Lundberg until accepted by Lundberg. Any quotations given by Lundberg will be valid for the period stated on the quotation.

If Lundberg agrees to arrange freight for any Order, Buyer will be responsible for either the actual, average or mixed freight costs and insurance costs incurred in shipping the Products to the Buyer, as agreed by the parties prior to shipping. Lundberg shall not be responsible for delivery errors attributable to the freight carrier, including penalties, late charges or fees (collectively, "Delivery Claims"); however, Lundberg will submit Buyer's Delivery Claims to the carrier and make reasonable attempts to seek reimbursement for such Delivery Claims.

**Taxes.** Any tax which Lundberg may be required to pay or collect through assessment or otherwise under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any goods described herein, including without limitation, taxes upon or measured by receipts from sales, shall be for the account of Buyer and may be added to the price of such goods. Buyer shall promptly pay the amount thereof to Lundberg upon demand but may, in lieu of such payment, furnish tax exemption certificates acceptable to the appropriate taxing authorities to Lundberg.

**Setoff; Deductions.** In no event is Buyer authorized to deduct any amounts from the amounts owed Lundberg unless specifically authorized in writing by Lundberg or authorized via a preapproved promotional event. Unless otherwise set forth in the applicable Order, all deductions related to promotional events must be submitted to Lundberg within ninety (90) days of the termination of the promotional event. Any deduction not submitted within ninety (90) days of such event's termination will not be reimbursed.

**Credit.** All Orders are subject to the approval of Lundberg's Credit Department. Lundberg may at any time refuse to make shipment or delivery if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in

compliance with Lundberg's credit policies. Lundberg policies or practices may be changed at any time. Lundberg may require payment in full or other security in advance. Without limiting the generality of the foregoing, if Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay Lundberg's invoices as they become due, Lundberg reserves the right to: (a) cancel all or any part of a Sales Contract or Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any Product shipment.

**Default in Payment.** If Buyer fails to make payments on any contract between Buyer and Lundberg in accordance with Lundberg's terms, Lundberg, in addition to any other remedies available to it, may at its option (a) defer further shipment until such payments are made and satisfactory credit arrangements are reestablished; or (b) cancel the unshipped balance of any Order. Any amounts which are not paid when due shall bear interest from the date payment was due until the date payment is received by Lundberg, at a rate of interest equal to the lower of (i) 1.5% per month or (ii) the highest rate of interest permitted under applicable law. Buyer will be responsible for all costs of collection of unpaid invoices, including reasonable attorney's fees.

**Quality Assurance.** Lundberg shall have no obligation to ensure that any goods purchased from Lundberg meet any special quality assurance specifications and/or other requirements unless such specifications and/or other requirements are set forth in the Order and expressly accepted by Lundberg.

**Technical Assistance.** Unless otherwise expressly agreed in writing by Lundberg, Lundberg assumes no obligation or liability for any technical advice provided by Lundberg with respect to the use of goods furnished to Buyer, or for any results occurring as a result of the application of such advice and Buyer shall have sole responsibility for selection and specification of the goods appropriate for the end use of such goods.

**Damaged Goods.** If any goods arrive at Buyer's destination in a damaged condition or a shortage occurs, Buyer shall immediately report the damage or shortage to the delivering carrier and to Lundberg. Any loss or shortage caused by damage in transit will be for account of Buyer, and in no event will Lundberg be responsible for any damaged goods reported more than thirty (30) days from Buyer's documented receipt thereof.

**Name, Logo, Trademarks.** Buyer may not use or reference Lundberg's name, logo, trademark or other intellectual property right of Lundberg for any purpose whatsoever, without Lundberg's prior written consent.

**Express Limited Warranty.** Lundberg guarantees that on the delivery date Lundberg branded Products delivered under the Order or Sales Contract (a) will be representative of the brand or grade specified in the applicable Sales Contract or Order and (b) will not be: (i) adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act (the "Act"), as amended, or within the meaning of any state food

and drug law, the adulteration and misbranded provisions of which are substantially similar to those in the Act; and (ii) an article which may not, under the provision of the Act, be introduced into interstate commerce.

**The foregoing warranties are exclusive and in lieu of any other warranties of any kind (whether arising by implication or by operation of law) with respect to the Products. Lundberg hereby disclaims any and all warranties of merchantability, fitness for a particular purpose and all other warranties, express or implied.**

If Buyer discovers that any of the Products fail to meet the warranties provided herein, Buyer shall promptly notify Lundberg. If Lundberg determines that the Products are in breach of the Express Limited Warranty, then Lundberg will, at its sole discretion, either replace the non-conforming Products at no cost to Buyer or refund the purchase price of the non-conforming Products to Buyer. **Such replacement or refund is the sole liability of Lundberg and the exclusive remedy of Buyer for any breach of the express limited warranty.** In no event shall any goods be returned, reworked or scrapped by Buyer without the express written authorization of Lundberg.

**Conditions to Express Limited Warranty.** Products will not be deemed to be in breach of the Express Limited Warranty if: (a) the Products are *not stored or handled appropriately after delivery by Lundberg*; (b) the non-conformity of the Products resulted from damages occurring after Lundberg's delivery of the Products; or (c) the non-conformity of the Products has not been reported to Lundberg in writing within the earlier to occur of ten (10) days after the Buyer has learned of the non-conformity of the Products or forty-five (45) days after delivery of the Products to Buyer. If Buyer or any purchaser from Buyer shall alter or modify the Products without Lundberg's prior written consent, and any claims are asserted against Lundberg by reason of such alteration or modification, Buyer shall defend, indemnify, and hold Lundberg harmless against any and all damages, liabilities, expenses and costs in connection therewith or resulting therefrom.

**Indemnification.** To the maximum extent allowed by law, Buyer shall defend and indemnify Lundberg and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that Lundberg may incur or be obligated to pay as a result of: (a) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (b) Buyer's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety labeling, packaging and labor practices; or (c) Buyer's breach of a Sales Contract, Order or these Sales Terms.

**Limitation on Lundberg's Liability.** **Neither Lundberg nor its affiliates shall have any liability for special, incidental, consequential, indirect, punitive or exemplary damages for any reason or under any theory of liability whatsoever, including, without limitation, damages for loss of business, lost profits, business interruption, or other pecuniary loss,**

even if Lundberg or its affiliates have been apprised of the likelihood of such damages occurring.

Buyer may not institute any action in any form arising out of any sales contract, order or these sales terms more than twelve (12) months after the cause of action has arisen.

In no event shall Lundberg's liability under any Sales Contract or Order exceed the purchase price of the goods giving rise to the claim.

**Force Majeure.** Lundberg shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, strikes, lockouts or labor disruption, wars, riots or embargo delays, government allocations or priorities, raw material market conditions, shortages of transportation equipment, fuel, labor or materials, inability to procure supplies or raw materials, severe weather conditions, or any other circumstance or cause beyond the reasonable control of Lundberg. In the event of the occurrence of a Force Majeure event, Lundberg shall have the right, but not the obligation, to allocate product among its customers and potential customers.

**Cancellation.** Orders cannot be canceled or modified by Buyer except with the express written consent of Lundberg.

**Termination.** Lundberg may terminate any Order or any part thereof as allowed by these terms. Upon such termination, Buyer agrees to waive all claims for damages, including without limitation, any loss of anticipated profits, and to accept as its sole remedy for termination the reasonable additional costs of obtaining substitute goods of the same quantity and quality, provided such costs do not exceed the Order price. Any claim for adjustment not asserted within ninety (90) days from the date of such termination shall be deemed to have been waived by Buyer.

**Assignment.** No part of any Order may be assigned by Buyer without prior written approval of Lundberg. Lundberg will be entitled to cancel any Order upon written notice to Buyer in the event Buyer assigns or attempts to assign such Order without Lundberg's prior written consent.

**Notices.** All notices must be in writing and will be deemed given only when sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable Order or Sales Contract or by written notice.

**Entire Agreement.** These Sales Terms, together with the Order or Sales Contract, if any, comprise the complete and final agreement between Lundberg and Buyer, and supersede all prior negotiations, proposals, representations, commitments, understandings or agreements between Lundberg and Buyer, either written or oral, on its subject. Any other representations or warranties made by any person, including employees or other agents of Lundberg, that are inconsistent with these Sales Terms shall be disregarded by Buyer and are not binding upon Lundberg.

**Modifications.** No Order nor these Sales Terms may be modified or amended except in writing signed by both Lundberg and Buyer specifically referring to the applicable Order and/or these Sales Terms.

**Waiver.** Lundberg's failure to insist on performance of any of the terms or conditions in these Sales Terms or to exercise any right or privilege, or Lundberg's waiver of any breach of these Sales Terms shall not waive any other terms, conditions or privileges, whether of the same or similar type.

**Severability.** If any clause or provision in these Sales Terms is determined to be invalid, the remaining provisions of these Sales Terms will remain in full force and effect.

**Choice of Law and Venue.** All Orders shall be governed by and interpreted in accordance with the laws of the State of California without giving effect to its choice of law provisions. Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction that may prevent or interfere with fulfillment of any Order. Litigation brought to contest disputes arising under any Order or these Sales Terms shall be brought only in the state or federal courts of the State of California.

**Survival.** The terms of a Sales Contract or Order and these Sales Terms that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, survive such expiration or termination.

**Attorneys Fees.** If either party commences an action against the other to interpret or enforce the Order or these Sales Terms or as a result of a breach by the other party of the Order or these Sales Terms, the prevailing party shall be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such action.

**Last Updated: 09/01/15**