

AFI Terms and Conditions for Import Contract
Adopted by the Processed Foods Section of the Association of Food Industries, Inc.
April 27, 1991

1. TERMS AND CONDITIONS

For the protection of all parties it is agreed that this contract, both front and back, contains the entire agreement between the parties and that there are no promises, terms, conditions or obligations and no warranties or representations, other than those contained in this contract or otherwise required by applicable law.

2. LIABILITY

The merchandise travels at Buyer's risk unless otherwise specified. The Seller is not responsible for loss or damages resulting from loss of merchandise at sea, or failure to make shipment within the specified time or at all, when such failure is due to fire, strike, boycott, flood, earthquake, windstorm, war, riot or revolution, government restriction or prohibition.

3. SHIPMENT

Immediate shipment shall mean shipment within ten (10) days from the date of this contract. Prompt shipment shall mean shipment within twenty-one (21) days from the date of this contract. If the Seller fails to make shipment within the agreed period of time because of the contingencies specified in Paragraph Two (2) above, he shall notify the Buyer at once and then the shipping period required by this contract is automatically extended one month. If Seller fails to make shipment within the one month extension period he shall notify the Buyer within the following five days. In the event the Buyer intends to make claims for damages, he shall immediately present an itemized written statement of such damages to the Seller or the Seller's Agent and the Seller or his Agent shall then immediately notify the Buyer when the claim is allowed or disallowed.

4. PARTIAL DELIVERY/SEVERABILITY

When right to partial shipment exists, this contract is severable as to each shipment, and non-delivery, delayed delivery, or non-conformity with contract requirements of any part shall not affect Buyer's obligations to accept and pay for any other part, which acceptance and payment shall be made without prejudice.

5. CHANGES IN DUTY AND/OR FREIGHT RATES

Any changes, after date of this contract, in rate of duty, United States import taxes, or valuations by United States Customs, shall be for the account of the Buyer unless otherwise specified. Any changes in freight rates between contract date and bill of lading date shall be for the account of the Buyer when merchandise is purchased on an FOB basis or shall be for the account of the Seller when merchandise is sold on a C&F or CIF basis.

Wherever the ocean freight is paid, it includes all charges until the freight is picked up by the Buyer's trucker at the destination stipulated in the Ocean Bill of Lading. By "all charges" is meant ocean carriage, terminal handling charges, currency adjustment factors, container rental charges, container yard charges, bunker surcharges, and any other surcharges imposed.

6. BUYER'S FINANCIAL RESPONSIBILITY

Unless otherwise specified under the heading of *Terms* in this contract, payment to Seller is to be made immediately upon official notification of passage/clearance by the U.S. Food and Drug Administration.

If the Buyer owes the Seller any overdue amount at the time of delivery against this contract, or if the Buyer has breached the contract on previous deliveries, or if the Buyer's credit has been impaired, the

Seller has the following options, after giving the Buyer ten (10) days notice by cable or telegram: (1) to make shipments cash against documents, and the Buyer shall be bound to pay for them that way; or (2) to consider any undelivered portion of this contract as automatically canceled; or (3) to sell any merchandise still due in the open market, crediting or debiting the Buyer with the difference between the net price thus realized and the price set at this contract. When the Seller desires to take advantage of these remedies, the Buyer shall have the right to establish an irrevocable Letter of Credit, and in such case the Seller shall have no right to these remedies.

Should the Buyer fail to order out the merchandise within the specified time, the Seller shall have the right to effect shipment on the first available vessel.

7. DEFAULT IN ACCEPTANCE OF GOODS

In the case of default in acceptance of the merchandise by the Buyer, the Seller is authorized to sell it or authorize others to sell it even though it may bear the trade marks or the trade name of the Buyer.

8. INSURANCE

Buyer agrees to obtain an open policy or such other form of insurance to protect himself on shipments made, whether advices thereon are received or not. In cases where Seller is required by the terms of his agreement to provide insurance it shall be for 110% of the C&F value and for all risks including war risk insurance.

9. RESPONSIBILITY IN DELAYS

Seller does not assume any responsibility for the delay in the arrival of documents nor for delay or failure of advice of shipment to reach Buyer in time to cover insurance.

10. ARBITRATION

Any controversy or claim arising out of or relating to this contract or breach thereof, or any controversy between a party hereto and the broker or agent solely relating to the payment of brokerage or commission, shall be settled by arbitration in New York, N.Y., by the Association of Food Industries, Inc., in accordance with its rules, and judgment may be entered upon the award.

Each party to this contract consents that any papers, notices or process necessary or proper for the institution or continuation of any arbitration proceeding or for the confirmation of an award and entry of judgment may be served upon such party (1) by registered or certified mail addressed to such party's last known address; or (2) by personal service; or (3) where a party to a controversy is not located in the United States, by certified mail or personal service upon his Agent or Broker through whom this contract is made.

11. DETENTION

Merchandise is sold subject to inspection and/or passing by the U.S. Food and Drug Administration, or by any other United States Government Department, Bureau or Agency with jurisdiction over it. Should the merchandise or any part of it be detained at the Port of Customs Entry by the United States Government and not eventually released for entry after reasonable efforts have been made by the Buyer to remove such detention, it is understood that the Seller is not required to make a replacement of the merchandise and that this contract in regard to the detained and unreleased merchandise shall then become void; and the Seller shall be released of all responsibility and liability except that he must refund the purchase price, if paid, plus freight charges, insurance and other expenses necessarily incurred by the Buyer in connection with the transaction.

12. RESPONSIBILITY OF AGENT OR BROKER

No agent or broker or any party to this contract shall be liable for any damages resulting from or by

reasons of mistake or delay by any communications company in transmitting any message in connection with this transaction, whether prior or subsequent to the making of this contract.

13. CANCELLATION OR MODIFICATION

This contract cannot be canceled or modified except in writing signed by all parties hereto or their duly authorized agents.