

INGREDIENT PURCHASE TERMS AND CONDITIONS

1. **Applicability/Purpose.** These terms and conditions (the “Terms”) govern the purchase of ingredient products (“Products”) from the Ingredient Technology Group of Ocean Spray Cranberries, Inc. or its affiliate, (“Ocean Spray”) by a customer (“Customer”) through email, Ocean Spray’s website, Electronic Data Interchange, and/or any other purchase document that references these Terms (the “Order”). The Order and the Terms comprise the entire agreement between the parties (collectively, the “Agreement”). These Terms shall not apply (a) to the sale of Ocean Spray® branded, retail food and beverage products and (b) if Ocean Spray and the Customer executed a formal, written agreement that governs the purchase and sale of the Products and addresses the issues herein.
2. **Shipment.** Shipping arrangements shall be as set forth in the Order. Title and risk of loss to the Products shall pass to the Customer per the Incoterms® 2010 indicated in the Order and, if shipped outside the U.S., shall pass prior to arrival at the port of destination.
3. **Quality, Grade, Size and Condition.** Products at the time of shipment by Ocean Spray will be of the size, quality and grade specified in the Order. Customer must follow the Recommended Quality Guidelines (“Guidelines”) provided to the Customer prior to delivery of the Products. The Customer will bear all responsibility for adhering to the Guidelines and for any claims arising out of the quality or condition of the Products after acceptance and reasonable inspection of the goods.
4. **Delivery, Inspection, and Acceptance.** An Order shall be deemed accepted by Ocean Spray upon the earliest of (i) an electronic or written acceptance of the Order from Ocean Spray or (ii) shipment of the Products subject to the applicable Order by Ocean Spray. Customer will be deemed to have accepted delivery of Products and waived any and all claims with respect to them unless (a) Customer notifies Ocean Spray of any alleged carton damage and/or shortages within five (5) Days of taking possession of the Products, and/or (b) Customer notifies Ocean Spray of any concealed damage to the Products or that the Products do not materially conform to the specifications stated in the Order within fourteen (14) Days of taking possession of the Products. To be effective, Customer’s notice must detail the basis of the claim that the Products were non-conforming, and customer must furnish any supporting documentary evidence requested by Ocean Spray.
5. **Remedies for Non-Conforming Products.** If Customer timely and properly notifies Ocean Spray under Section 4 and Ocean Spray, in its sole discretion, determines that the Products are nonconforming, Ocean Spray may (i) replace nonconforming Products or (ii) credit the Customer the purchase price of the nonconforming Products. If Products were shipped outside the United States, Customer has no right to reject or refuse Products at the port of destination but may revoke acceptance after taking possession. Customer and Ocean Spray Customer agrees that these remedies are Customer’s sole and exclusive remedies for the delivery of nonconforming Products. Customer shall follow Ocean Spray’s instruction to dispose of or return nonconforming Products, but Customer has no right to return the Products without Ocean Spray’s prior written authorization.
6. **Cancellation.** The Customer may cancel or modify an Order prior to shipment, provided Ocean Spray agrees to such modification in writing. Customer agrees to pay to Ocean Spray all costs and expenses incurred and damage sustained by Ocean Spray due to any cancellation or modification.
7. **Force Majeure and Liability.** Ocean Spray will not be liable for any delayed delivery, non-delivery, short delivery, or for loss or damage to the Products and will be excused from performance under the Agreement for the duration of a force majeure event, which includes any crop shortage, fires, explosions, elements, floods, drought, or other acts of God, governmental action, war or hostilities, insurrection, rebellions, sabotage, riots or any other civil disorder, embargoes, wrecks, failure or delay in transportation, loss at sea, labor disputes, strikes, slowdowns, or other concerted acts or threatened acts of workmen, inability to obtain necessary materials or equipment, failure of a carrier to transport the Products, criminal conduct of third parties, acts of Customer, or any other cause or contingency whatsoever beyond Ocean Spray’s control. Ocean Spray will notify Customer of a force majeure event as soon as practicable, and Customer may coordinate with Ocean Spray to ship the Products by an alternate route.
8. **Miscellaneous**
 - a. The Agreement constitutes the entire agreement between the parties pertaining to the subject matter. The holding of any provision hereof as void or unenforceable will not affect the validity or enforceability of any other provision.
 - b. If any of the Terms conflicts with the Order, the Terms shall govern and control the rights and obligations of the parties.
 - c. Ocean Spray and Customer agree that venue is proper in the Commonwealth of Massachusetts and this Agreement shall be interpreted in accordance with the laws of that state.