

POET Nutrition Sales Contract Terms & Conditions

1. **Governing Terms.** These Terms and Conditions of Sale and the Confirmation of Terms document to which they relate (together, these "Terms" or this "Contract") govern the sale and/or delivery by POET Nutrition, LLC ("POET") of the product described in the Confirmation of Terms ("Product") to the buyer identified on such Confirmation of Terms ("Buyer"), unless otherwise agreed in a written agreement signed by POET. POET offers to sell and/or furnish Product solely pursuant to these Terms and any acceptance is expressly limited to these Terms. If Buyer has ordered Product from POET and such order is deemed to be an offer, then POET's acceptance of such offer is expressly conditioned on Buyer's assent to these Terms. Any additional or different terms proposed by Buyer in any offer, acceptance or confirmation are requests for material alterations of these Terms and are rejected by POET. No course of dealing, course of performance or usage of trade will supplement or explain these Terms.

2. **Trade Rules.** The sale of Product to Buyer is made under, and is subject to, the trade rules or trade industry form contract identified in the Confirmation of Terms (such trade rules or form contract as amended and in effect from time to time, the "Trade Rules"), which are incorporated herein by this reference, except to extent the same are contradicted by these Terms. In the event of a conflict between these Terms and the Trade Rules, these Terms will govern. As used in the Confirmation of Terms, "AFOA" refers to the American Fats and Oils Association, and AFOA's Trade Rules shall be those pertaining to Vegetable Oils (Domestic & Import Contract); "FOSFA" refers to Federation of Oils, Seeds and Fats Association Limited; "GAFTA" refers to The Grain and Feed Trade Association; and "NGFA" refers to the National Grain and Feed Association and NGFA's Trade Rules shall be its Feed Trade Rules.

Specific Terms Applicable to Sales under FOSFA 32: Quality, conformance to Specifications and weight of Product, as specified in the terms/clauses of FOSFA 32 titled Quality, Specifications and Weight, respectively, shall be determined at the place and time of stuffing/loading of the Product. Sampling of the Product, as specified in the term/clause of FOSFA 32 titled Sampling, shall be conducted based on samples taken at the time and place of stuffing/loading of the Product. The following terms/clauses of FOSFA 32 shall be deemed deleted and are not applicable to this Contract: Declaration of Destination; and Extension of Time for Handling Over.

Specific Terms Applicable to Sales under FOSFA 54: The weight of the Product taken at the place of loading, as specified in the term/clause of FOSFA 54 titled Weights, shall be determinative. The following terms/clauses of FOSFA 54 shall be deemed deleted and are not applicable to this Contract: Declaration of Destination; and Insurance.

3. **Weights; Units of Sale.** Unless otherwise specified in the Confirmation of Terms, all weights of the Product will be on a net weight basis in tons or avoidupois (16 ounce) pounds. The unit of sale, if agreed by POET, may be by rail car, tank car, truck, barge, container, tote, barrel or similar bulk conveyance, in which case such weights will be approximate, must be agreed upon in advance by POET and Buyer, and are not subject to overflow or underfill claims by either party (unless the Confirmation of Terms specifies that the unit of sale is tons, in which case overflow and underfill claims will apply). Unless a demand for arbitration is made pursuant to Paragraph 22, within thirty (30) calendar days of Delivery of the Product, Buyer waives all claims for a deficiency in weight of the Product.

4. **Price.** The price for the Product is the price specified in the Confirmation of Terms. No allowances, adjustments or discounts to the price or weight of the Product will be given for any settling, impurities or shortages of the Product, except as agreed in writing by POET or as provided in these Terms or the applicable Trade Rules.

5. **Price Changes; Taxes; Fees; Freight Rates; Surcharges.** Any change in the price or other terms of this Contract caused by government regulations will entitle POET to cancel this Contract or any unshipped portion thereof. In the event any tax (including tonnage tax or sales/use tax), feed inspection fee, public charge, duty or tariff is assessed or imposed on the Product, POET's sale thereof, or other action taken hereunder, or on the export or import of the Product, or if any changes are made in the customs or railway classification for the Product or in the existing freight rates, then each such tax, fee, charge, duty, tariff or change will be paid by Buyer, and Buyer shall promptly reimburse POET if POET incurs the same on Buyer's behalf. Any fuel surcharge or increase in freight rates taking effect before the full performance of POET's obligations hereunder will be paid by Buyer, unless otherwise expressly provided in these Terms.

6. **Payment.** Unless otherwise specified in the Confirmation of Terms or agreed in writing by POET, Buyer will remit payment in full for the Product, at the address indicated on POET's invoice, upon invoice. If the Confirmation of Terms specifies payment by letter of credit, such letter of credit shall be an irrevocable and confirmed commercial letter of credit from a bank acceptable to POET, in its discretion, in favor of POET, received thirty (30) days prior to POET's estimated shipment date and payable (a) upon presentation of invoice no later than upon Delivery, in the case of distillers grains or (b) no later than 48 hours after POET's presentation of the applicable documents. No cash discounts will be granted. All amounts past due will incur a finance charge of 1.5% per month, calculated from the date of delinquency. Buyer will pay POET on demand all costs and expenses incurred by POET in collecting delinquent accounts or in otherwise enforcing these Terms, including reasonable attorneys' fees. POET reserves the right to revise any credit terms or credit limits that may have been previously extended to Buyer. POET will retain a security interest in the Product sold hereunder to secure any portion of the price not paid by Buyer, and Buyer will, upon POET's request, execute any other documents requested by POET to evidence such interest. Buyer authorizes POET to file financing statements to evidence the security interest described herein. All payments including claims shall be made in U.S. Dollars; and, all such payments must be made to POET's bank account in the United States.

7. **Title; Shipment.** Unless stated otherwise in these Terms, all Products will be delivered pursuant to the Incoterm specified in the applicable Confirmation of Terms or, if applicable, the relevant FOSFA form contract ("Delivery"), at which point title and risk of loss will pass to Buyer, unless provided otherwise herein. For corn oil Products, title and risk of loss will pass from POET to Buyer as the Product passes the inlet flange of the truck or other vessel into which it is loaded. POET will use commercially reasonable efforts to ship distillers grains Products on or before the scheduled shipment date for such Products. Failure on the part of POET to ship or deliver, or non-conformity of the Products in, any installments will not be a breach of the entire agreement. POET's weights will govern settlement. No allowance for shortage will be made by POET, unless Buyer furnishes acknowledgment from the carrier that such loss did not occur in transit. In the event of loss or damage in transit, Buyer will file its own claim with the carrier.

8. **Demurrage; Detention.** POET reserves the right to charge Buyer for detention or demurrage charges incurred in connection with the shipment or delivery of the Products to the extent such charges are incurred due to Buyer's failure to unload a railcar or other delivery conveyance within a reasonable amount of time.

9. **Delivery; Acceptance.** Buyer shall be solely responsible for ensuring the cleanliness and proper functioning of any transport vessel it or its agents use to accept Delivery of the Product, including but not limited to the tank and any loading equipment. POET may refuse to load any transport vessel for corn oil Product that has not been cleaned or that did not previously contain corn oil. In the event a transport vessel provided by Buyer is not reasonably acceptable to POET, Buyer will be notified and granted 24 hours to remedy the deficient transport vessel to the reasonable satisfaction of POET or to accept liability for the quality and grade of the shipment. Buyer will have five (5) days after Delivery to determine whether the Product conforms to the requirements of these Terms. Buyer waives all claims against POET unless such claims are delivered in writing to POET within such 5-day period.

10. **Force Majeure.** Except as otherwise provided in this section, POET will not be liable for any failure or delay in its shipment or Delivery of the Product or other performance hereunder in the event such performance is hindered or prevented, directly or indirectly, due to acts of God, fire, flood, wind, explosion, war, hostilities, riot, embargo, blockade, civil commotion, sabotage, law, act of government, prohibition to export, labor difficulties, strike or lockout, shortages of fuel or other types of energy, diminished production of the Product by POET's regular suppliers, or any other cause beyond the reasonable control of POET (each, a "Force Majeure Event"). If the Product is corn oil subject to AFOA Trade Rules and POET is unable to deliver, or Buyer unable to receive, Product under this Contract due to a Force Majeure Event, then: the Delivery date will be extended by up to thirty (30) calendar days after termination of the Force Majeure Event, but not more than sixty (60) calendar days from the original Delivery date; and should Delivery not be possible within these sixty (60) calendar days, then this Contract or any unfulfilled portion thereof will be cancelled, with no liability on the part of either party to the other. If the Product is corn oil subject to a FOSFA form contract (as provided in Paragraph 2 above), then a Force Majeure Event shall be addressed in the manner specified in the applicable FOSFA form contract.

11. **Seller Warranties and Disclaimers; Limitation of Liability.** POET warrants that at the time of Delivery the Products will conform to the following specifications (the "Specifications"): (a) in the case of Products that are distillers grains, the product attributes described on the Feed Tags associated with such Products, or (b) in the case of Products that are corn oil, the POET Corn Oil Product Specification Sheet for the particular commodity. Any corn oil grades or specifications not referenced on the applicable Product Specification Sheet, such as neutral oil loss, will not apply to the Product or these Terms. This limited warranty is exclusive and in lieu of all other warranties, including without limitation any warranties under the applicable Trade Rules. POET does not extend this limited warranty, and Buyer may not transfer it, to Buyer's customers or any other third party. POET MAKES NO OTHER WARRANTY, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, OR THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. POET DOES NOT WARRANT, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY, THAT THE PRODUCTS ARE FREE OF OR DO NOT CONTAIN GENETICALLY MODIFIED ORGANISMS OR THAT THEY OTHERWISE QUALIFY AS OR MAY BE CONSIDERED TO BE "NON-GMO" OR "GMO-FREE".

Buyer understands, acknowledges and agrees that (a) the Product is NOT INTENDED FOR HUMAN CONSUMPTION AND POET EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USE, (b) Buyer shall not, and shall not permit any other party to, use the Product for human consumption and (c) neither POET nor its suppliers shall be liable to Buyer or any third party, in whole or in part, for any claims arising from any such use. There are no oral agreements or warranties collateral to or affecting this Contract. POET does not extend this limited warranty, and Buyer may not transfer it, to Buyer's customers or any other third party. Buyer assumes all risk and liability for use and/or resale of the Products, whether used or resold singly or in combination with any other materials or products.

To the maximum extent permitted by applicable law, and except with respect to liability arising from death, personal injury, damage to real or tangible property or fraudulent misrepresentation or as otherwise provided in any FOSFA form contract specified in the Confirmation of Terms document, the sole and exclusive liability of POET, and the sole and exclusive remedy of Buyer, for POET's breach of its limited warranty or any other obligation under these Terms is limited exclusively, at the option of POET, to: (a) replacement of the nonconforming Products or (b) adjustment of the price of the nonconforming Products to the fair market value thereof (taking into account such nonconformance) at the time of breach, as reasonably determined by POET. WITHOUT LIMITING THE FOREGOING, POET WILL IN NO EVENT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER IN AN ACTION BASED ON CONTRACT, TORT OR OTHER LEGAL THEORY, ARISING FROM OR RELATED TO THE TRANSACTIONS CONTEMPLATED HEREUNDER, EVEN IF POET KNEW OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, POET'S AGGREGATE LIABILITY FOR DAMAGES FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR IN TORT OR OTHERWISE), SHALL BE LIMITED TO BUYER'S DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE NET AMOUNT POET WAS PAID FOR THE PRODUCT(S) THAT CAUSED THE DAMAGES OR ARE THE SUBJECT MATTER OF THE CAUSE OF ACTION.

12. **Buyer's Representations.** Buyer represents that it is not insolvent, as the term is defined under any applicable state or federal law, and that Buyer is able to perform its obligations under these Terms. In the case of Product designated as disposal product on the Confirmation of Terms, Buyer represents that the Product is not intended for animal consumption and that the Product will be disposed of in compliance with all applicable laws, rules, and regulations. In entering into this Contract, POET has relied on such representations.
13. **Indemnification.** Buyer shall defend, indemnify and hold harmless POET and its affiliates, equity holders, officers, directors, consultants, employees, agents and assigns from and against any losses, damages, claims, liabilities and expenses, including attorneys' fees, arising from, in connection with or related to: (a) Buyer's violation of any of its obligations under these Terms; (b) the subsequent use and/or resale of the Product by Buyer or any direct or indirect transferee of Buyer; and (c) Buyer's violation of any applicable law, rule or regulation.
14. **Default.** Except as may otherwise be provided in any FOSFA form contract specified on the Confirmation of Terms document, in the event: (a) Buyer fails to make full payment for any Products when due or breaches any other obligation of Buyer under these Terms, (b) Buyer fails to accept conforming Products, (c) a voluntary or involuntary petition in bankruptcy is filed against Buyer or Buyer becomes insolvent or makes an assignment for the benefit of creditors, (d) Buyer is dissolved, liquidated, merged or transfers a substantial part of its assets, (e) all or a controlling portion of Buyer's stock or other ownership interest is transferred, or (f) Buyer's financial condition becomes unsatisfactory to POET, then POET, in addition to all other rights or remedies hereunder or at law or in equity, may: (i) terminate all pending orders of the Products without liability to Buyer, (ii) require Buyer to provide adequate assurance of performance, including such payment or other security as POET may specify, (iii) declare all sums due POET by Buyer to be immediately payable, and (iv) make shipments or deliveries only on arrival draft of C.O.D. basis or require cash in advance of shipment. All remedies are cumulative.
15. **Acknowledgment.** Buyer acknowledges that POET has set its prices, and has agreed to sell the Products to Buyer, in reliance on the limitations of liability, disclaimer of warranties and exclusive remedies set forth in these Terms, and that such provisions form an essential basis of the bargain between the parties, without which POET would not have agreed to sell Products to Buyer.
16. **Use of Name; Marketing Matters.** Buyer agrees that POET may reference Buyer as a customer of its products, include Buyer's name in current customer lists, on POET's website and in other promotional materials and display Buyer's name and logo on POET's website. Buyer agrees that it shall not represent as a POET Dakota Gold® product any product, whether purchased obtained hereunder from POET or otherwise obtained from POET or any third party, unless such product was originally sourced from POET and sold by POET as a Dakota Gold product.
17. **Confidential Information.** These Terms and any information or materials transmitted by POET to Buyer in conjunction with POET's sale of the Products may contain information confidential and proprietary to POET or its affiliates. Buyer may not use such information except in conjunction with the performance of the transactions contemplated by these Terms and may not disclose such information to any third parties without the prior written consent of POET. The confidentiality obligations set forth in this section are in addition to, and not in derogation of, Buyer's obligations of confidentiality under any other agreement with POET, including any non-disclosure agreements and/or material transfer agreements. In the event of a conflict between the terms of such other agreements and these Terms, the terms of such other agreements will govern and control.
18. **Research Prohibited.** Except to the extent required by applicable law or as otherwise provided in this Contract, Buyer, directly or through any agent or third party, may not conduct any research, trials, experiments or analysis, including without limitation feeding trials, food use and/or further processing (collectively "Research") on the Products without the written consent of POET, and Buyer agrees to bind any subsequent possessors and/or purchasers of the Products to the terms of this section, or similar terms at least as restrictive as those found herein. Buyer will immediately notify POET of any information it discovers that may constitute a violation of this section.
19. **Legal Compliance; Changes.** Buyer will comply with all applicable laws, ordinances, regulations and administrative rules governing the purchase and/or use of the Products, including without limitation all environmental laws and regulations and all laws and regulations governing the export or import of the Products. Buyer will give all notices required by such laws, ordinances, regulations and administrative rules which apply to the Products. Any change in the price of the Products caused by changes in governmental regulations will entitle POET to cancel any unshipped or undelivered portion of the Products to be shipped or delivered by POET hereunder.
20. **Notices.** POET and Buyer may transmit and receive documents and notices by email in lieu of written documents and notices, unless objected to by Buyer. The failure of Buyer to object to such notification method within five (5) days of Buyer's receipt of these Terms will constitute Buyer's agreement to future electronic notifications between the parties.
21. **Governing Law.** These Terms, the transactions hereunder and any claim arising under or relating to the subject matter hereof shall in all respects be governed by, subject to, and construed and enforced in accordance with the laws of the State of South Dakota, U.S.A. or, with respect only to the extent the transaction contemplated by these Terms is pursuant to a FOSFA form contract, the laws of the State of New York, U.S.A. in either case without regard to principles of conflicts of law. The parties expressly agree that the terms of The United Nations Convention on Contracts for the International Sale of Goods or any successor thereto do not apply to these Terms.
22. **Disputes.** Except as provided in this section, all disputes arising out of the performance or non-performance of the parties' obligations hereunder will be settled by arbitration: (a) in Sioux Falls, SD, USA pursuant to (i) the Arbitration Rules of the National Grain and Feed Association, as amended from time to time, in the case of Product that is distillers grains subject to the NGFA Trade Rules or (ii) pursuant to the Arbitration Rules of the American Fats and Oils Association, as amended from time to time, in the case of Product that is corn oil subject to the AFOA Trade Rules, as applicable; or (b) in New York, NY, USA pursuant to (i) the Arbitration Rules No. 125 of the Grain and Feed Trade Association, as amended from time to time, in the case of Product that is distillers grains subject to the GAFTA Trade Rules, or (ii) to the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Association, Limited, as amended from time to time, in the case of Product that is corn oil subject to FOSFA Trade Rules, as applicable. Any judgment based upon an arbitration award under this paragraph may be entered in the highest court of the forum, state or federal, having jurisdiction. Notwithstanding the foregoing and except as may be otherwise provided in any FOSFA form contract specified on the Confirmation of Terms document, POET, at its option, may pursue collection of delinquent payments in any court having jurisdiction, including but not limited to, the federal or state courts located in Minnehaha County, SD, USA, and Buyer hereby agrees to the jurisdiction of, and venue within, such courts. Unless otherwise expressly provided in these Terms, any and all claims of Buyer under these Terms are waived unless arbitration is demanded per this section within one (1) year after the date Buyer received the Product at issue.
23. **Waiver.** POET will not be deemed to have waived any of its rights or remedies under these Terms or any applicable law unless the waiver is in a writing signed by POET and no waiver of a right or remedy will operate as a waiver of such right or remedy or any other right or remedy on any future occasion.
24. **Assignment.** These Terms will bind and inure to the benefit of POET and Buyer and their respective successors and assigns. Buyer may not assign or delegate any rights or obligations under these Terms without the written consent of POET, and any purported assignment without POET's written consent will be null and void. In the event Buyer is a corporation or other legal entity, a prohibited assignment by Buyer will be deemed to have occurred upon the transfer of a majority of shares or other ownership interests in Buyer, whether such transfer takes place in one transfer or successive transfers over time. POET may assign or delegate any and all rights and obligations under these Terms to a third party without Buyer's consent.
25. **Entire Agreement; Amendment.** These Terms and all other documents referenced herein, constitute the entire agreement between POET and Buyer with regard to the Products and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating thereto. This Contract and these Terms may not be superseded, cancelled or amended except in a writing signed by POET. No other act, document, course of dealing, usage or custom will be deemed to supersede, cancel, modify or amend these Terms. If any provision of these Terms is determined to be invalid, illegal or unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the parties and the remaining provisions will remain in full force and effect.
- The following terms apply if the transaction contemplated by these Terms is subject to AFOA Trade Rules, which terms shall prevail in the event they explicitly conflict with any of the foregoing Terms:**
26. **Truck and Rail Car Offloading.** (a) Each rail car shall be unloaded and empty released within 72 hours of the earlier of constructive placement or actual placement at the delivery point specified in the Confirmation of Terms (the "Delivery Point"). After this 72-hour window has expired, a detention or demurrage fee will begin to accrue at the rate of \$100 per day until the rail car is empty released back to the railroad. Detention fees will be calculated on a monthly basis. If a rail car is the Delivery Point without being released prior to the start of the first day of the next month, then that rail car will be calculated on the next month's detention calculation. (b) Each truck shall be offloaded within two hours of arriving at the Delivery Point. After this 2-hour window has expired, a detention or demurrage fee will begin to accrue at the rate of \$50 per hour until the truck is empty and scaled out of the facility.
27. **Grade, Quality and Sampling.** Conformance to the Specifications will be determined in accordance with American Oil Chemists Society accepted methods. For Grade and Quality analysis for purposes of this section, POET will take an official sample of the Product to be shipped under this Contract (the "Official Sample"). The Official Sample will be a representative sample collected during the loading process that are combined in a clean sample container. The sample will be taken to capture, at a minimum, a sample from the beginning, middle, and end of the loading process. An aliquot of the load composite sample, constituting the Official Sample, will be retained for 6 months at room temperature in an amber glass bottle. The Official Sample will be a referee sample for third party testing in the event of a dispute. Buyer will have five (5) calendar days from Delivery of the Product to analyze the Product and to advise POET of the results (failure to do so within these five (5) calendar days will constitute Buyer's acceptance of the Product as conforming to the terms set forth in this Contract). POET will then have five (5) calendar days to accept or reject the results of Buyer's analysis. If the parties cannot reach a mutual agreement, then the referee sample will be sent to a mutually agreeable neutral party for a binding independent analysis. The fee for the neutral party's analysis will be charged to the party against whom the decision results.
29. **AFOA Allowances and Adjustments:** Allowances and adjustments provided for by this Contract are: Insolubles - POET shall credit Buyer at the rate of one-tenth of one percent (0.1%) of contract price for each one-tenth of one percent (0.1%) of insolubles in excess of one percent (1%) calculated on the net weight of the Product.
30. **Limited Remedy:** Notwithstanding anything to the contrary in Paragraph 11, the sole and exclusive liability of POET and the sole and exclusive remedy of Buyer for breach of any provision of these Terms by POET is limited exclusively, at the option of POET, to allowance or adjustment to the Product price pursuant to Paragraph 28, replacement of the affected Product, or payment of the fair market value of the affected Product at the time of breach. Any Specification dispute between Buyer and POET with regard to the Product will be resolved according to Paragraphs 22 and 27; any Specification claims of Buyer are waived upon Buyer's acceptance of the Product as described in Paragraph 9.