

GAIN'S TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS



2015

GLOBAL ALLIANCE FOR IMPROVED NUTRITION

1. INTERPRETATION

1.1 Definitions. In these Conditions the following definitions apply:

- **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in Switzerland are open for business.
- **Certification Agent:** Intertek, or such other party as may be chosen by the Customer from time to time provided notice is given in writing to the Supplier of this change.
- **Conditions:** the terms and conditions set out in this document together with the annexes appended hereto (as amended from time to time) and any other terms and conditions set out in the Purchase Order together with the schedules thereto.
- **Consignee:** the party to whom the Goods are to be delivered by the Supplier.
- **Customer:** Global Alliance for Improved Nutrition (an independent foundation registered under the laws of Switzerland and having its registered office at Rue de Varembé 7, CH-1202 Geneva, Switzerland).
- **Force Majeure Event:** has the meaning given in clause 22.5.
- **Fortified Foods:** Foods that the Consignee intends to produce using the Goods from the Supplier.
- **GAIN Procurement Facility:** An initiative launched by the Customer with the objective of improving access to affordable, quality certified vitamin and mineral premix and other inputs used in food fortification. The initiative offers a central procurement and certification service to its customers where the goods are competitively sourced across a group of suppliers who have been pre-qualified in terms of their manufacturing standards.
- **Goods:** the goods referred to in Schedule 1 of the Purchase Order.
- **Parties and each a Party:** the Customer and the Supplier.
- **Purchase Order:** the contract between the Customer and the Supplier for the sale and purchase of Goods in accordance with these Conditions.
- **Supplier:** the manufacturer and/or supplier who sells the Goods to the Customer and supplies the Goods to the Consignee.

1.2 Construction. In these Conditions, the following rules apply:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to the **Parties** or a **Party** includes its personal representatives, authorised agents, successors or permitted assigns.

A reference to a **statute** or **statutory provision** is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes faxes, letters and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions shall be incorporated into and shall supplement the terms of the Purchase Order and shall apply to the Purchase Order to the exclusion of any other terms that are implied by trade, custom, practice or course of dealing.

2.2 The Purchase Order shall include the following information as agreed between the Parties:

2.2.1 the date on which the contract for the purchase of the Goods by the Customer from the Supplier is deemed effective (the "**Date of Issue**");

2.2.2 the specific Purchase Order number;

2.2.3 the source document number;

2.2.4 details of the location to which the Goods are to be delivered and received by the Consignee (the "**Delivery Location and Address**");

2.2.5 the terms of delivery, which shall be based on the international sales terms published in 2010 by the International Chamber of Commerce, as may be subsequently revised (the "**Incoterms**");

2.2.6 the estimated delivery date (the "**Delivery Date**");

2.2.7 the type and specifications of the Goods that shall be supplied by the Supplier to the Consignee, the details of which can be found at Schedule 1 to the Purchase Order (the "**Specification**");

2.2.8 the method of transportation of the Goods;

2.2.9 the quantity of the Goods;

2.2.10 the total net price of the Goods per Unit (the "**Unit Price**");

2.2.11 the net price of the Goods and the currency in which the Goods shall be paid for by the Customer (the "**Net Price**");

2.2.12 the cost of transporting the Goods necessary to bring the Goods to the Delivery Location and Address which includes all delivery costs, fees, duties and charges (the "**Transportation Costs**");

2.2.13 the cost of insurance against the risk of loss of or damage to the Goods during carriage (the "**Insurance Costs**");

2.2.14 the Customer's sampling and/or testing and/or inspection requirements (the "**Testing Requirements**");

2.2.15 the documents to be sent to the Customer and the documents to be sent to the Consignee by the Supplier (the "**Supplier Documentation**");

2.2.16 the terms and conditions incorporated into the Purchase Order, which shall be these Conditions; and

2.2.17 any terms and conditions incorporated into the Purchase Order in addition to these Conditions ("**Additional Conditions**").

2.3 These Conditions shall only be deemed to come into existence on the Date of Issue, or to the extent that no Date of Issue is provided, on the date the Supplier applies its signature to the Purchase Order.

3. THE PROCUREMENT PROCESS

3.1 The Supplier shall supply the Goods in accordance with these Conditions.

3.2 The Customer shall make payments to the Supplier in accordance with clause 13 below.

3.3 The Goods shall be supplied in accordance with the Specification.

3.4 The Supplier shall comply with and ensure that the Goods comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, including without limitation all applicable statutory and regulatory requirements within the country where the Goods are manufactured, the Customer's country and the Consignee's country.

3.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Purchase Order.

4. ALTERATION OF SPECIFICATION

4.1 The Supplier may alter the Specification, provided that any alterations to the Specification by the Supplier shall only be made if the Customer has either made a written request for such alterations, or has provided the Supplier with written consent to the same.

5. GUARANTEE

5.1 The Supplier guarantees that:

5.1.1 The Goods shall be new, of fresh manufacture, of satisfactory quality, fit for the purpose for which the Goods are ordinarily used, suitable for use in the Consignee's country and for any purpose expressly made known in writing to the Supplier.

5.1.2 The Goods shall have no defect arising from design, materials or workmanship, or from any act or omission of the Supplier and/or its sub-suppliers, distributors or manufacturers.

5.1.3 Upon receipt of notification of a claim, the Supplier shall promptly repair or replace any defect in or damage to the Goods free of charge including covering any transport charges to the Consignee. If the Supplier requests that the defective Goods be returned to it, the Consignee shall arrange for it to be returned to it at the Supplier's cost. Where the Supplier supplies replacement Goods, and does not at that time request return of the defective Goods, no responsibility for the defective Goods shall rest with the Customer or the Consignee.

5.1.4 If the Supplier fails to remedy the defect or damage within a reasonable period of time, the Customer may, after giving notice to the Supplier, take such remedial action as may be necessary, at the Supplier's risk and expense, without prejudice to any other rights which it may have against the Supplier.

5.1.5 If the Goods are not manufactured by the Supplier, the Supplier shall ensure that the sub-supplier, distributor and/or manufacturer shall be under the same liability to the Supplier as the Supplier's liability to the Customer under the Purchase Order.

6. PACKAGING

6.1 The Supplier shall provide such packaging as:

6.1.1 specified in the Specification;

6.1.2 is required to prevent damage to or deterioration of the Goods during transit to and storage at the final destination, or as may be reasonably anticipated as prudent, bearing in mind the final destination of the Goods and the mode(s) of transport being used to carry the Goods to the same;

6.1.3 is required to ensure that the Goods reach their destination in good condition;

6.1.4 is required to withstand rough handling and exposure to extreme temperatures; and

6.1.5 is required to withstand being withheld by customs authorities for a number of weeks.

6.2 The cost of the packaging referred to at clause 6.1 shall be included in the Unit Price.

6.3 Where applicable, each individual container i.e. bag, bottle, tin, vial, ampoule etc. shall be marked in English with the name of the product, including (unless not applicable) the pharmacopoeia standard.

6.4 In addition, each individual container shall bear the following information, which should be in English unless otherwise requested by the Customer:

6.4.1 The name and location of the manufacturer;

6.4.2 The shelf life and/or date of expiry where applicable;

6.4.3 The composition of the Goods;

6.4.4 Any risk symbols associated with the composition of the Goods; and

6.4.5 Storage conditions.

6.5 If labels are used, these shall be affixed with adhesive suitable for conditions in the country of destination.

6.6 The Supplier shall ensure that the packaging (and the marking and documentation within and outside the packaging) shall comply strictly with (i) the requirements expressly provided above, (ii) the specific terms of the Purchase Order, (iii) any instructions from the Customer subsequent to the Date of Issue, and (iv) where appropriate, with any relevant regulations governing the dispatch of hazardous cargo by sea, air or overland.

6.7 Where dispatch by air is desirable or essential owing to the nature of the Goods, this must be communicated in writing by the Supplier to the Customer during the production process and prior to the Goods being dispatched.

6.8 Where dangerous Goods are to be transported, the Supplier shall provide and sign a Shipper's Declaration in respect of these Goods and shall do so for each consignment of these Goods.

6.9 Where compliance with packaging instructions, which are issued by the Customer subsequent to the Date of Issue, involves an addition or reduction in the Unit Price and/or in the period required for delivery, such revision of the Unit Price and/or of the period required for delivery shall be agreed in writing between the Parties. In all other respects, the Purchase Order shall remain unaltered.

7. INSPECTION

7.1 The Supplier shall send to the Customer, within 3 (three) Business Days of any request by the Customer, any documents the Supplier has received from its sub-suppliers, distributors and/or manufacturers.

7.2 The Supplier shall comply with the Testing Requirements.

7.3 All testing and/or inspections shall be carried out by a person(s) appointed by the Customer (the "**Inspector**"), and the Supplier shall provide all reasonable facilities for such testing and/or inspections to be carried out.

7.4 Where vitamins and /or minerals are being supplied to the Customer either singularly or as a blend (the "**Premix**"), the following additional conditions shall apply:

7.4.1 Alternatively or in addition to the Inspector carrying out testing and/or inspections, the Certification Agent shall conduct analysis on samples of the Premix that it receives in accordance with the Customer's instructions;

7.4.2 The Certification Agent shall ensure that these samples comply with the Specification and are being produced in accordance with good manufacturing practices, which are specified at Annex A to these Conditions ("**Good Manufacturing Practices**"); and

7.4.3 The Certification Agent shall be entitled, by giving no less than 7 (seven) days written notice to the Supplier, to inspect the Supplier's premises and facilities to ensure on-going compliance with Good Manufacturing Practices and the Supplier shall not refuse the Certification Agent entry to its premises for this purpose.

7.5 If at any time, the Certification Agent and/or the Inspector find the Goods to be defective or inferior in quality to, or differing in form or material from the Specification, the Customer may issue a quality complaint and reserve its right to withhold payment of funds under clause 13 below.

7.6 If the Customer issues a quality complaint, the Supplier shall, at its own expense, replace or make good to the satisfaction of the Certification Agent and/or the Inspector any Goods subject to the quality complaint.

7.7 If it is not possible for the Supplier to replace or make good the Goods, the Customer may reject the Goods and if the Supplier has already received part or full payment for the Goods, the Supplier shall immediately refund to the Customer any and all monies paid to it on account of any such Goods.

7.8 If the Certification Agent and/or the Inspector issue a quality complaint, such that the Certification Agent and/or Inspector undertakes additional testing and/or inspections as a result, the Customer shall be entitled, in addition to any other remedies available under the Purchase Order, to deduct from the Supplier's invoices any additional costs of inspection.

7.9 If any of the Goods, whether completed or in the course of production, are rejected by the Certification Agent and/or the Inspector, they shall be marked or segregated in such manner satisfactory to the

Certification Agent and/or the Inspector in order to ensure their subsequent identification as rejected Goods.

- 7.10** The Supplier shall retain all samples that it provides to the Certification Agent and/or the Inspector in case that re-testing is required.
- 7.11** The Supplier shall supply, free of charge, all appliances, materials and labour required for testing and/or inspection purposes.
- 7.12** If delivery of the Goods (including completion of associate services) is not completed by the Delivery Date by reason of any default of the Supplier, then in addition to any liability which may arise to pay liquidated damages, the Customer shall be entitled to deduct from the Supplier's invoices, any additional costs of testing and/or inspection caused by default of the Supplier.
- 7.13** Notwithstanding any testing and/or inspection of the Goods, the Supplier shall remain fully responsible for the Goods and any such testing and/or inspection shall not reduce or otherwise affect the Supplier's obligations under the Purchase Order.
- 7.14** The Supplier shall not send any of the Goods forwarded for shipment or report the Goods ready for dispatch until a certificate of analysis has been issued on its behalf. Once issued, the Supplier shall ensure that copies of the certificate of analysis are sent to the Customer at the same time or prior to dispatching the Goods. The certificate of analysis shall not release the Supplier from any of its liabilities under the Purchase Order.

8. DOCUMENTATION

- 8.1** Copies of all Supplier Documentation and, where applicable, such documentation required by the applicable Incoterm shall be delivered to the Customer and the Consignee prior to the Delivery Date. The original documents shall be couriered as per the instructions of the Customer.
- 8.2** Notwithstanding clause 8.1 above, the Supplier must deliver to the Customer and/or the Consignee any and all documents that are reasonably requested by the Customer.
- 8.3** The mark shown on any bill of lading must be identical in all respects with that on the packaging and in the Purchase Order. Bills of Lading must not be taken out 'to order' unless otherwise instructed by the Customer. A FIATA bill of lading is acceptable only if prior written agreement has been given by the Customer.
- 8.4** If an export licence is required from the country of manufacture or export, the provision and costs of providing such a licence shall be the responsibility of the Supplier.
- 8.5** Notwithstanding the provisions of the Incoterms and/or any contract of carriage entered into by the Supplier in connection with the delivery of the Goods, the Supplier shall promptly pay any demurrage, per diem and detention charges and any similar charges levied by the carrier and/or by any port authority where such charges are levied as a result of the Supplier's late or non-compliant submission of relevant documentation or where such charges are levied as a result of the Supplier's breach of the Supplier's obligations pursuant to the Purchase Order or as a result of the Supplier's negligence.
- 8.6** Without prejudice to clause 8.5, should the Customer or the Consignee incur any demurrage costs or other charges referred to in clause 8.5 or incur any expense in respect of dealing with any claim in connection with such charges, the Customer shall have the right to recover such charges and expenses from the Supplier as a debt or by way of deductions from any monies owed to the Supplier.

9. DELIVERY OF THE GOODS

- 9.1** The terms of delivery as set out in the Purchase Order shall be based on the Incoterms.
- 9.2** Where there is a conflict between the terms of delivery as set out in the Purchase Order and the express provisions of these Conditions, the terms of delivery set out in the Purchase Order shall prevail.
- 9.3** The Supplier shall oversee the delivery of the Goods to the Consignee, which shall include:
- 9.3.1** arranging for testing and/or inspection of the Goods to be carried out prior to dispatch of the Goods pursuant to clause 7 above;
 - 9.3.2** providing regular updates to the Customer of any variations to the delivery schedule which includes any change to the Delivery Date;
 - 9.3.3** delivering the Goods to the Delivery Location and Address or such other location as the parties may agree in writing; and
 - 9.3.4** ensuring the delivery of the Goods is accompanied by a delivery note which contains (i) the Purchase Order number, (ii) the quantity and Specification of the Goods, and (iii) special storage instructions (if applicable).
- 9.4** The Customer may request at any time prior to delivery that the quantity or Specification of Goods be revised, but any revision must be confirmed in writing by the Parties.
- 9.5** Any variation to the Delivery Date must be agreed between the Parties in writing. The time of delivery is of the essence.
- 9.6** Delivery of the Goods shall be completed upon the Consignee accepting delivery of the Goods at the Delivery Location and Address. If the Consignee fails to accept delivery of the Goods within 3 (three) Business Days of receiving notice that the Goods are ready for delivery, then:
- 9.6.1** delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd (third) Business Day after the day on which the Consignee received notice that the Goods were ready for delivery; and
 - 9.6.2** the Supplier may store the Goods at its own expense until actual delivery takes place unless otherwise instructed by the Customer.
- 9.7** If the Consignee fails to accept delivery of the Goods within 10 (ten) Business Days of receiving notice that the Goods are ready for delivery, the Supplier shall arrange for the Goods to be delivered to the Customer in accordance with the Customer's instructions. Until the Goods have been delivered to the chosen destination of the Customer, the Goods shall remain at the risk and expense of the Supplier.
- 9.8** If the Goods are not delivered in accordance with the Purchase Order, the Supplier shall be liable for any loss or expense arising as a result. The Customer shall not be liable for any expenses arising from non-delivery or delay in delivery due to a lack of shipping opportunities or any other cause.
- 9.9** Following acceptance of the delivery of the Goods at the Delivery Location and Address, the Customer shall notify the Supplier in writing if the Goods are proven not to conform to the agreed terms and include in any such notice full details of the extent to which the Goods are proven not to conform.
- 9.10** On receipt of a written notice under clause 9.9, the Supplier shall, at the Customer's order, supply such replacement Goods as is deemed necessary by the Customer free of charge and as soon as

reasonably practicable. These Conditions shall apply to any replacement Goods supplied by the Supplier.

10. LIABILITY

10.1 If the Supplier fails to deliver the Goods by the Delivery Date, the Customer shall, without limiting its other rights or remedies, be entitled to:

- 10.1.1** Terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
- 10.1.2** Refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 10.1.3** Recover from the Supplier any costs incurred by the Customer or the Consignee in obtaining substitute goods from a third party; and
- 10.1.4** Claim damages for any additional costs, loss or expense which are in any way attributable to the Supplier's failure to meet such dates.

10.2 If the Supplier has delivered Goods that do not comply with any of the conditions in clause 13 and/or any of the guarantees in clause 5 then, without limiting its other rights and remedies, the Customer shall have one or more of the following rights, whether or not the Goods have been accepted by the Consignee:

- 10.2.1** To reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 10.2.2** To terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
- 10.2.3** To require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- 10.2.4** To refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 10.2.5** To recover from the Supplier any expenditure incurred by the Customer or the Consignee in obtaining substitute Goods from a third party; and
- 10.2.6** To claim damages for any additional costs, loss or expenses incurred by the Customer or the Consignee arising from the Supplier's failure to supply the Goods in accordance with the conditions in clause 3 and/or any of the guarantees in clause 5.

11. LIQUIDATED DAMAGES FOR DELAY

11.1 If the Supplier fails to complete delivery of the Goods by the Delivery Date, the Customer may at its option, recover from the Supplier as a debt or deduct from any payment owed to the Supplier, 1 (one) per cent of the Net Price of Goods for every day delivery is delayed by way of liquidated damages up to a maximum of 10 (ten) per cent of the Net Price of the Goods.

11.2 The Supplier shall not be liable to pay liquidated damages where delay in delivery of the Goods has been caused by the Customer or the Consignee preventing the Supplier from delivering the Goods.

- 11.3** The Supplier shall not be liable to pay liquidated damages where delay in delivery of the Goods is a result of a Force Majeure Event.
- 11.4** Without prejudice to the provisions of clause 9.8, the Supplier shall have liability for liquidated damages in respect of any contract on FOB/FAS/FCA terms for any period during which the Goods are packed and ready for dispatch but cannot be shipped because of a lack of shipping opportunities or similar cause.
- 11.5** If the Customer exercises its rights under this clause, it shall not be entitled to any of the remedies set out in clause 10.1.2 to 10.1.4 inclusive or in clause 18.1.1 in respect of late delivery of the Goods (but such remedies shall be available in respect of the condition of the Goods).
- 11.6** The Customer shall have the right to recover or deduct liquidated damages from the Supplier in accordance with this clause 11 notwithstanding the termination of the Purchase Order.

12. PRICE

- 12.1** The Net Price for the Goods as agreed between the Customer and the Supplier shall be set out in the Purchase Order.
- 12.2** The Net Price of the Goods shall be exclusive of:
- 12.2.1** the costs of testing and/or inspections of the Goods prior to delivery. The Party responsible for these costs shall be determined by the Incoterm governing delivery. To the extent that the relevant Incoterm is silent in respect of allocating these costs (or part thereof), they shall be for the Supplier's account.
 - 12.2.2** the Transportation Costs. The Party responsible for these costs shall be determined by the Incoterm governing delivery. To the extent that the relevant Incoterm is silent in respect of allocating these costs (of part thereof), these costs shall be for the Supplier's account.
 - 12.2.3** the Insurance Costs. The Party responsible for these costs shall be determined by the Incoterm governing delivery. To the extent that the relevant Incoterm is silent in respect of allocating these costs (or part thereof), these costs shall be for the Supplier's account; and
 - 12.2.4** all costs occurring after the Goods have been delivered or deemed delivered including (i) the cost of contracting with a clearing agent to arrange clearance and payment of any port handling charges, duties and taxes, (ii) the cost of arranging on-carriage as is necessary to the Consignee's warehouse (or the warehouse of a third party nominated by the Customer) from the Delivery Location and Address, and (iii) the cost of arranging for an import licence to be issued if required. These costs shall be for the Consignee's account.
- 12.3** The Supplier shall charge 0 (zero) per cent value added tax (VAT) on the supply of Goods to the Customer.

13. PAYMENT

- 13.1** The Supplier may invoice the Customer for the Goods on or at any time after dispatch of the Goods, but must not invoice the Customer until the Customer and Consignee have confirmed safe receipt of the documentation specified in clauses 8.1 and 8.2 above.

- 13.2** The expiry date of the Goods shall be specified in the invoice and (where dispatch by post is impracticable or prohibited) on the Supplier's application for shipping or airfreight dispatch.
- 13.3** The Customer shall pay the invoice in full and in cleared funds within the time specified in the 'Payment Terms' section of the invoice, which should be no less than 36 (thirty six) days from the date of the receipt of the invoice. Payment should be made to the bank account nominated in the invoice by the Supplier. Time of payment is not of the essence.
- 13.4** If the Customer disputes any invoice, the Customer shall immediately notify the Supplier in writing. Once written notice has been received by the Supplier, the Parties shall negotiate in good faith to resolve the dispute promptly. Whilst the dispute is on-going, the Supplier may not cease or suspend any further delivery of goods under other purchase orders entered into by the Parties.
- 13.5** The Customer may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier, or any amount which may become due to the Supplier whether under the Purchase Order or any other contract between the Parties. The Supplier shall pay any amounts due to the Customer, without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

14. RISK

- 14.1** Risk in the Goods shall pass to the Customer when the Goods are delivered or deemed delivered to the Consignee in accordance with clause 9.6 above.

15. TITLE

- 15.1** Title to the Goods shall not pass to the Customer until all monies owing by the Customer in respect of the Goods have been paid in full (in cash or cleared funds) and received by the Supplier.

- 15.2** Until title to the Goods has passed to the Customer, the Supplier shall:

15.2.1 without limiting clause 22.12 below, take out an insurance policy for and against all risks associated with the Goods:

- (a)** for the Net Price of the Goods from the date the Goods are delivered or deemed delivered in accordance with clause 9.6 above;
- (b)** with an insurer that is reasonably acceptable to the Customer;
- (c)** on behalf of both the Customer and the Supplier; and
- (d)** with an aggregate annual limit of not less than the value of the Goods.

15.2.2 allow the Customer to inspect the insurance policy in respect of the Goods.

16. INTELLECTUAL PROPERTY, CONFIDENTIALITY AND COMMUNICATIONS

- 16.1** Each Party shall retain ownership and/or control of its name and logo and any concepts, know-how, tools, frameworks and intellectual property ("Intellectual Property") which are proprietary to it or which are developed outside of the Purchase Order.

- 16.2** Except as otherwise stated in these Conditions, nothing in these Conditions shall grant a Party any right, title or interest in the Intellectual Property of the other Party.
- 16.3** Except with the prior written agreement of both Parties, each Party shall at all times keep strictly confidential and shall not disclose the terms of the Purchase Order nor any confidential information which it may acquire in the course of the performance of the Purchase Order or in relation to the activities or affairs of the other Party (“Confidential Information”) to any person, other than a person employed by the Supplier in carrying out the Purchase Order. This clause does not apply to information that is (i) already in the public domain, or (ii) that is required to be disclosed by law.
- 16.4** The Supplier shall not advertise or publicise its association with the Customer, nor may the name, emblem, or logo of the Customer or of the GAIN Procurement Facility be used, published or otherwise exploited without the Customer's prior written approval.
- 16.5** Except with the prior written agreement of the Customer, the Supplier shall not make use of any information or specification supplied by the Customer otherwise than for the purpose of the performance of the Purchase Order.
- 16.6** The Supplier shall ensure that its employees comply with the confidentiality obligations set out in clause 16.3.
- 16.7** Specifications, plans, drawings, patterns or samples remain the property of the Customer and must be returned (with all copies made) to the Customer on completion of the Purchase Order.

17. REPRESENTATIONS AND WARRANTIES

- 17.1** Unless otherwise expressly stated in the Purchase Order, the Supplier represents and warrants that:
- 17.1.1** it has full right, power and authority to enter into the Purchase Order and to perform its obligations under the Purchase Order and has not entered into any arrangement which in any way conflicts with these Conditions or inhibits, restricts or impairs its ability to perform its obligations under the Purchase Order;
 - 17.1.2** its execution, delivery and performance of the Purchase Order have been duly authorised and by all requisite corporate action;
 - 17.1.3** the Purchase Order has been duly executed and delivered by it and is a valid and binding obligation on it, enforceable against it in accordance with its terms;
 - 17.1.4** it is not entitled to claim for itself or for any of its assets, immunity from suit, execution, attachment or other proceedings in any jurisdiction in connection with the Purchase Order. To the extent it may have any such claim for immunity in any relevant jurisdiction, it agrees to waive such claim to the fullest extent permitted by law.
 - 17.1.5** it is not a matter of law or official regulations in the Consignee's country that the Supplier is prohibited from having commercial relations with the Consignee's country;
 - 17.1.6** it does not owe any taxes to or is engaged in any dispute with any government, department or agency in the Consignee's country;

17.1.7 the Goods are not partially or wholly manufactured in a country prohibited from having commercial relations with the Consignee's country as a matter of law or official regulation in the Consignee's country; and

17.1.8 it has full and unencumbered title to the Goods and that at the date of delivery of the Goods it shall have full and unrestricted rights to transfer the Goods to the Consignee.

18. ACKNOWLEDGMENTS, LIABILITIES AND INDEMNITIES

18.1 The Supplier shall fully indemnify and hold harmless the Customer, its agents, contractors, officers, directors and employees and any related funding agencies and the Consignee from and against any and all damages, costs, losses, fees, expenses, liabilities, charges, claims, suites, actions, judgments, costs and any other expenses whatsoever, (including reasonable legal and attorney fees) arising out of, or in any way connected with:

18.1.1 any late delivery of the Goods;

18.1.2 any acts or omissions of the Supplier in relation to, or arising out of, the rights or obligations of the Purchase Order;

18.1.3 Goods that have expired or are expiring, have deteriorated or are deteriorating, are damaged or are missing, whether due to poor stock rotation, handling, shrinkage, damage, theft or loss;

18.1.4 the distribution, supply, delivery and/or storage of the Goods under the Supplier's control or possession or for which the Supplier is responsible;

18.1.5 the Fortified Foods and/or the production process used to create the Fortified Foods;

18.1.6 any actual or alleged infringement of a third party's intellectual property rights arising out of or in connection to the manufacture, supply or use of the Goods;

18.1.7 any claim made against the Customer or the Consignee by a third party for death, personal injury or damage to property arising out of or in connection with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

18.1.8 loss of or damage to property for which the Supplier is responsible;

18.1.9 personal injury or death; or

18.1.10 any breach, negligent performance, failure or delay in performance of these Conditions by the Supplier, its employees, agents or sub-contractors.

18.2 Neither Party will be liable to the other Party for any lost profits or any indirect, consequential, incidental, punitive or special damages suffered in connection with the Purchase Order.

19. TERMINATION

19.1 Without prejudice to any other right or remedy that the Customer may have, the Customer may by written notice to the Supplier terminate the Purchase Order with immediate effect in whole or in part if:

- 19.1.1** The Supplier fails to deliver any or all of the Goods by the Delivery Date;
- 19.1.2** The Supplier fails to perform any other obligations under the Purchase Order;
- 19.1.3** An order is made or a resolution is passed for the winding up of the Supplier, or an order is made for the appointment of an administrator to manage the affairs, business and property of the Supplier, or such an administrator is appointed, or a receiver is appointed of any of the Supplier's assets or undertaking, or circumstances arise which entitle a court or a creditor to appoint a receiver or manager or which entitles a court to make a winding up order, or the Supplier takes or suffers any similar or analogous action in consequences of debt, or an arrangement or composition is made by the Supplier with its creditors or an application to a court for protection from its creditors is made by the Supplier;
- 19.1.4** The Supplier suspends or ceases, or threatens to suspend or cease, payment of its debts or to carry on all or a substantial part of its business or is unable to pay its debts as they fall due or admits inability to pay its debts;
- 19.1.5** The Supplier assigns or sub-contracts any of the rights or obligations of the Purchase Order without the prior written consent of the Customer;
- 19.1.6** The Supplier fails to comply within a reasonable time with any notice from the Customer requiring it to make good any failure to perform its obligations under the Purchase Order;
- 19.1.7** There is any change in the legal personality, nature or control of the Supplier which could, in the Customer's opinion, affect the liabilities or obligations of the Supplier under the Purchase Order;
- 19.1.8** Any adverse final judgement is made in respect of any offence relating to the professional conduct of the Supplier;
- 19.1.9** The Supplier has, in the opinion of the Customer, engaged in or is threatening to engage in a corrupt or fraudulent practice in competing for or obtaining or executing the Purchase Order;
or
- 19.1.10** The Supplier has a conflict of interest as referred to in clause 22.6.
- 19.2** Where the Customer terminated the Purchase Order in whole or in part for breach or default, the Customer may purchase elsewhere goods similar to that in the Purchase Order and the Supplier shall pay the Customer any costs incurred for such goods over and above the Net Price of the Goods. The Supplier shall continue performance of that part of the Purchase Order not terminated.
- 19.3** The Customer reserves the right to terminate the Purchase Order in whole at any time, or in part from time to time, for its sole convenience. In the event of such termination, the Supplier shall immediately stop all work under the Purchase Order and shall immediately cause any and all of its suppliers, distributors and manufacturers to cease work. Subject to the terms of the Purchase Order, the Supplier shall be paid a percentage of the Purchase Order reflecting the work performed prior to the notice of termination, plus reasonable charges which the Supplier can demonstrate to the Customer's satisfaction have resulted from the termination. The Supplier shall not be paid for any work performed or costs incurred which could reasonably have been avoided.
- 19.4** Any provision of the Purchase Order which expressly or by implication is intended to come into or continue in force on or after termination of the Purchase Order shall remain in full force and effect after termination of the Purchase Order.

19.5 Termination of the Purchase Order, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

20. CORRUPTION AND FRAUDULENT PRACTICES

20.1 The Supplier warrants that it has not and shall not:

20.1.1 Offer or agree to give any person working for or engaged by the Consignee or the Customer any gift or other consideration, which could act as an inducement or reward for any act or failure to act connected to the Purchase Order, or any other agreement with the Supplier, including the award of the Purchase Order to the Supplier and any of the rights and obligations contained within it; nor

20.1.2 Enter into the Purchase Order if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Consignee or the Customer by or for the Supplier, or that an agreement has been reached to that effect, unless details of any such description have been disclosed in writing to the Customer and accepted by the Customer in writing before execution of the Purchase Order.

20.2 The Supplier shall, if requested by the Customer, make a declaration in a form acceptable to the Customer that it has not made any bribe or facilitation of payment on the Customer's behalf or on behalf of the Consignee.

20.3 If the Supplier (including any Supplier, employee, sub-contractor, agent, sub-supplier, distributor or manufacturer, in all cases whether or not acting with the Supplier's knowledge) breaches:

20.3.1 Any of the provisions of this clause 20; or

20.3.2 Any of the provisions of the Bribery Act 2010 or any similar legislation in relation to the Purchase Order or any contract with the Customer;

The Customer may terminate the Purchase Order by written notice with immediate effect.

20.4 Any termination under clause 20.3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Customer or the Consignee.

20.5 Notwithstanding clause 21, any dispute relating to:

20.5.1 The interpretation of clause 20.1 to 20.3 inclusive; or

20.5.2 The amount or value of any gift, consideration or commission;
Shall be determined by the Customer and the decision shall be final and conclusive.

20.6 The Customer will not make payments to bank accounts in countries where the Supplier is not domiciled unless the Supplier provides written evidence satisfactory to the Customer that the payment is not contrary to the taxation laws and/or foreign exchange controls of the Supplier's country of domicile. The Customer reserves the right to refuse to make payments to such bank accounts in any event.

21. GOVERNING LAW AND JURISDICTION

- 21.1** The Parties agree that any disputes between the Parties shall in the first instance be resolved in good faith by the designated representatives of the Parties. If the matter remains unresolved, clause 21.2 below shall apply.
- 21.2** The Purchase Order and any non-contractual obligations arising out of, relating to or having any connection with the Purchase Order, its performance or any breach thereof, are governed by Swiss law. Any dispute, claim, difference or controversy arising out of, relating to or having any connection with the Purchase Order, including any dispute involving any non-contractual obligations or any question regarding the Purchase Order's existence, its validity, interpretation, performance, termination, or any breach thereof, shall unless settled amicably by direct negotiation under clause 21.1 be referred to and finally resolved exclusively by arbitration at the request of either Party, under the Swiss rules of International Arbitration of the Swiss Chambers of Commerce. The legal place of arbitration shall be Geneva, Switzerland. The language of the arbitral proceedings shall be English. All documents submitted in connection with the proceedings shall be in English or if in another language, accompanied by an English translation.

22. GENERAL PROVISIONS

- 22.1** Non-exclusivity: The Parties understand and agree that each Party may enter into and/or carry on activities similar to the Purchase Order in the same country or other parts of the world, independently or in partnership with each other or with different partners, provided that such activities do not violate these Conditions. Without limiting the preceding provisions of this clause 22.1, the Customer agrees that it is not the sole recipient of the Goods and other third parties may from time to time procure Goods from the Supplier and distribute it in the same country as the Customer or any other country or worldwide.
- 22.2** Notices: Any formal notice required to be given under these Conditions shall be transmitted in writing by prepaid registered mail and shall be addressed to the contact persons as provided in the Purchase Order. Other correspondence regarding the operations or the implementation of the Purchase Order shall be sent by email to the email addresses provided in the Purchase Order.
- 22.2.1** Notices or other communications shall be deemed to have been duly given or made under these Conditions: (a) if sent by prepaid registered mail, on the 5th (fifth) Business Day after the date of posting; and (b) if sent by email, on the next Business Day following transmission.
- 22.2.2** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 22.3** Entire Agreement: These Conditions constitute the entire agreement and supersedes any prior oral or written agreements or communications between the Parties. Each Party agrees that in entering the Purchase Order it does not rely on, and will have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Purchase Order or not) other than expressly set out in these Conditions.
- 22.4** Amendment: No modification of or change in these Conditions or waiver of any of its provisions or additional contractual provisions shall be valid or enforceable unless previously approved in writing by the Parties either within the "Additional Conditions" section of the Purchase Order or in the form of an amendment to the Purchase Order duly signed by the Parties.

- 22.5 Force Majeure:** Delays in or failure of performance by a Party under the Purchase Order shall not constitute a default under the Purchase Order or give rise to any claim for damages if and to the extent caused by occurrences beyond the control of the Party affected, including, but not limited to, decrees of Government, acts of God, strikes or other concerted acts of workers, inability to procure materials or labour, fires, floods, explosions, riots, war, rebellion, sabotage and atomic or nuclear incidents ("Force Majeure Event(s)").
- 22.6 Conflict of Interest:** If any Party to the Purchase Order has knowledge or becomes aware of any actual, apparent or potential conflict between the financial interests of any person affiliated with such Party, or the other Party to the Purchase Order, and that Party's duties with respect to the Purchase Order, the Party shall immediately disclose the actual, apparent or potential conflict of interest directly to the other Party.
- 22.7 No Waiver:** No delay in exercising any right or remedy under the Purchase Order will be construed as a waiver of such right or remedy. The rights and remedies provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided by law.
- 22.8 Further Assurance:** Each Party shall promptly do all such acts or things or enter into any documentation reasonably required to assist the other Party in fulfilling its obligations under and to give effect to the provisions of the Purchase Order.
- 22.9 Assignment:** No Party may assign, sublicense or otherwise dispose of any of its rights or obligations under the Purchase Order without the prior written consent of the other Party. These Conditions are binding on and inure to the benefit of each Party, its successors and assigns.
- 22.10 Third Party Rights:** An entity that is not a party to the Purchase Order shall not have any rights to enforce these Conditions.
- 22.11 Invalidity, Illegality & Unenforceability:** If any provision of these Conditions is determined to be invalid, illegal or unenforceable, such provision shall not affect the validity, legality or enforceability of these Conditions but shall be severed from these Conditions and the remaining provisions of these Conditions shall continue in full force and effect.
- 22.12 Insurance:** Unless otherwise stated in these Conditions, each Party is solely responsible for effecting and maintaining at all times all necessary and appropriate insurances as may be prudent or as may be required including at law in connection with performance of the Purchase Order with a reputable insurance underwriter, including professional indemnity insurance, product liability insurance, public liability insurance and all other appropriate insurances covering accident and illness, social schemes and taxes that may be required for it or its staff and/or associates according to applicable national law.

ANNEX A

GOOD MANUFACTURING PROCESSES

Good Manufacturing Practices consist of the manufacturing of goods:

1. In accordance with the standards of the current edition (or the latest edition in which the goods are included) of an internationally recognised Monograph published by one of the following:
 - 1.1 Food Chemical Codex (FCC);
 - 1.2 The British Pharmacopoeia (BP);
 - 1.3 The United States Pharmacopoeia (USP);
 - 1.4 The European Pharmacopoeia (EP); or
 - 1.5 Any other recognised and stated standard acceptable to the Customer.
2. Where the goods are not defined in one of the publications mentioned at 1 above and no other standards are specified, in accordance with a tested 'in-house' formulation so as to be suitable for use as human nutrition.
3. That, if they are authorised for use in the country of manufacture, hold a Marketing Licence.
4. That, if they are not authorised for use in the country of manufacture, hold an Export Licence (if available).
5. That are accompanied with a certificate of analysis for every batch of finished product supplied.
6. That have readily available and which can be supplied to the Customer and/or Consignee upon request (i) information about relevant stability studies, and (ii) a guarantee of the quality of raw materials.