

TERMS AND CONDITIONS OF SALE

The terms and conditions of sale set for the below, unless modified in writing by Monarch Nutritional Laboratories, Inc. ("Seller"), shall govern the transaction specified on the face hereof between Seller and the party identified on the face hereof as "Customer", notwithstanding any conflicting term or condition of Customer's purchase order, acknowledgement or any other document or communication to the contrary.

- Terms of Sale.** Customer's order specified on the face hereof with respect to products to be purchased hereunder, services to be provided, or formulations to be developed or supplied (the "articles") shall be governed by these terms and conditions (the "Terms and Conditions"). Nothing contained in any purchase order or other correspondence shall in any way modify these Terms and Conditions or add any additional terms or conditions, all of which are hereby expressly objected to and rejected by Seller. Customer shall be deemed to have accepted and agreed to these Terms and Conditions upon the earlier to occur of Customer's receipt of articles or the commencement of performance by Seller according to a time frame requested by Customer (or reasonably to be inferred from Customer's purchase order). These Terms and Conditions may be revised at any time by Seller, and orders submitted after such revisions will be governed by the revised Terms and Conditions. The most current Terms and Conditions of Sale are available on Seller's website at www.monarchminerals.com/terms. Except as set forth herein, all sales are final.
- Payment.** Standard product orders for pre-approved credit applicants, are subject to terms of payment are net 30 days from date of shipment terms unless other terms are specifically granted in writing by Seller. If a customer does not have credit arrangements with Seller, items must be pre-paid or may be sent C.O.D. at Seller's discretion. For private label or custom products, terms of payment are 50% at the time of order, with the remainder due net 15 days from date of shipment. In either case, Seller may require a completed credit application prior to granting credit and may suspend Customer's credit at any time at Seller's sole discretion. Seller will not be required to perform or undertake any work until and unless customer is within payment terms at the time of order. Unless otherwise agreed to by Seller, all payments hereunder shall be in U.S. dollars. Any amounts owing hereunder and not paid on a timely basis shall bear interest at a rate of 1 1/2% per month, which is an annual percentage rate of 18% per annum (or the highest rate permitted by law, whichever is lower), applied to the adjusted previous balance from and after the due date thereof. Returned checks may be submitted for collection and are subject to a \$25 returned check fee. Failure to pay any amount owing in full on the terms specified herein shall void all discounts given. Customer shall pay all of Seller's costs and expenses (including attorneys' fees, court costs and other collections costs) incurred to collect any amounts owing Seller. Seller reserves the right to apply interest charges retroactively, whether or not they are shown on individual statements or invoices.
- Shipping.** Unless otherwise agreed upon in writing, all articles will be suitably packed for shipment in Seller's standard shipping cartons and delivered to Customer or its carrier agent FOB Seller's shipping dock in Ogden, Utah, with passage of title occurring upon delivery to the carrier. If special packaging is requested or necessary, Seller may invoice Customer for the cost of such special packaging. Except as set forth herein, all freight, insurance and other shipping expenses beyond the point of delivery, as well as any special packing expense, shall be paid by Customer. Seller may pay the same and invoice Customer for such charges, all of which shall be due owing on the terms described in paragraph 2 above.
- Risk of Loss and Delivery; Title.** Liability for loss or damage passes to Customer upon delivery to the carrier but Customer assigns to Company any claim for damage or loss that occurs during shipping or prior to the date Customer accepts the articles. Shipping and delivery dates are approximate only. Seller shall not be liable for any loss or expense (consequential, incidental or otherwise) incurred by Customer (or any of its customers) if Seller fails to meet such dates for any reason. Customer will be billed for the freight costs if a package is refused and a 20% restocking charge.
- Taxes.** Customer's purchase price does not include any federal, state, provincial or local taxes or fees that may be applicable to the sale or shipment of the articles, all of which will be the sole responsibility of Customer. Seller may either require prepayment of such taxes or fees, or add them as a line item on its invoice, and Customer will reimburse Seller for the same within 15 days of the date of the invoice. If a taxing authority later determines such taxes are owing, Customer shall promptly pay or reimburse Seller for the same.
- Inspection of Articles.** Customer will inspect all articles promptly upon receipt. Any articles that fail in a material way to meet applicable specifications must be rejected in writing within 30 calendar days of receipt of articles by Customer or they shall be deemed accepted. Failure to notify Seller of defects within 30 days after delivery and/or prior to encapsulating, tableting, mixing or processing constitutes final acceptance by the Customer.
- Returns.** No articles may be returned for credit, even if properly rejected, without prior authorization of Seller. A 20% restocking charge will be assessed on shipments refused or returned within 30 days of shipment date, unless the return is for properly rejected articles. Customer may not return custom labeled or manufactured items unless there is a defect, and then only if properly rejected. If Seller decides at its sole discretion to accept a return of any articles more than 30 days after the shipment date, a 40% restocking charge will be assessed on all such returns. No expired articles may be returned under any circumstances. Articles that have been bottled, encapsulated, tableted, or incorporated into or mixed with other ingredients or products, or which have been processed or contaminated, shall not be accepted for return. Customer will pay for all freight costs associated with returned articles (other than for properly rejected articles within 30 days or articles that fail to meet the warranty set forth herein and returned with prior authorization). Under no circumstances shall any credit be given for articles not purchased within the prior 12 months. Customer will be responsible for all shipping charges for any returned articles, except for those that are properly rejected within 30 days and returned with prior authorization. In no event will Seller be liable for replacement of articles (or for shipping charges) which have been damaged or abused by Customer or its agents. No credits may be taken by Customer without the express written consent of Seller. Seller will not authorize credit for any articles that have been destroyed or discarded by Customer.
- Manufacturing.** Unless otherwise agreed upon in writing, Seller's sole responsibility to Customer where Customer's order specifies the manufacture of a specific article or articles, is to accurately describe to Customer the ingredients and quantities of such ingredients used by Seller in the actual manufacture of the article, which information shall be conveyed to Customer through Seller's formulation sheet and/or a certificate of analysis provided at the time of delivery of the articles. Seller does not warrant that constituents of the articles which are present in trace or minimal amounts (including any levels that are required to be disclosed by the laws of a particular state or locale, other than the laws of the state of Utah or federal laws of the U.S.) are or will be disclosed, absent a specific written agreement between Seller and Customer which requests that Seller either provide or arrange for specific analytical procedures and which agrees upon a price for such additional services ("Analytical Services"). Seller does not warrant that any food allergen that may be a component or subcomponent of the articles, or carried on any constituent ingredient thereof, has been disclosed, in the absence of a specific written agreement between Seller and Customer providing for Analytical Services. Customer will be solely responsible for, and Seller will have no responsibility to comply with, the laws and regulations of any state or province or country into which the articles are sold by Customer, including the requirements of the Food Allergen Labeling and Consumer Protection Act of 2004, or into which Customer knows or should know the articles will be shipped or sold by Customer or its customers, absent a written agreement with Seller to the contrary.
- Labeling.** Unless specifically agreed to in writing to the contrary, Customer will be solely responsible for, and Seller assumes no liability or responsibility for, any claims, statements, representations or disclosures contained in the labeling or packaging affixed to Customer articles, including whether such labeling or packaging accurately or completely discloses the ingredients in such articles. Customer will be solely responsible for, and Seller shall have no responsibility to comply with, the labeling or packaging laws and regulations of any state or province or country into which the articles are sold by Customer, or into which Customer knows or should know the articles will be shipped or sold by Customer or its customers, including without limitation the provisions of the Federal Food Drug and Cosmetic Act, the Federal Trade Commission Act, the National Uniform Food Safety Labeling Act, or any other federal, state or municipal regulation governing the content of such labeling or packaging. Seller acknowledges that it has no right to or interest in the trademarks, trade names, service marks or other intellectual property of Customer as it pertains to the labeling or packaging of Customer articles. Customer warrants that it is solely responsible for, and Seller will not be liable for, securing rights to any of the copy, claims, trademarks, trade names, trade dress or any other intellectual property rights associated with or used in connection with the packaging and labeling of the articles. Customer will indemnify and hold harmless Seller and its affiliates, officers, directors and employees, from and against any and all claims, liabilities or losses, including attorneys' fees and court costs (together, the "Claims") by any third party with respect to any alleged infringement of intellectual property, trademark, trade name, trade dress or service mark rights.
- Warranty and Disclaimer.** Monarch warrants that the Products meet its written specifications. Monarch does not warrant, and specifically disclaims, that its Products meet any written specifications of Customer unless an authorized officer of Monarch has agreed in writing to meet such Customer specifications. Customer warrants that any ingredients or materials supplied or sourced or purchased by it ("Customer Materials") are fit for the intended purpose and of merchantable quality and meet any specifications provided to Monarch or published by the supplier thereof. Customer further warrants that it has disclosed to Monarch accurately all components or sub-components of any Customer Materials. Customer's sole remedy for defective articles shall be a refund of some or part of the purchase price. To the extent that any specifications or certifications are based upon information obtained from Seller's suppliers, Seller shall have no liability in the event such specifications or certifications are ultimately determined to be incorrect, other than to assign to Customer, without recourse, any claims which Seller may have against such suppliers. Seller does not warrant that constituents of the articles which are present in trace or minimal amounts (including any levels that are required to be disclosed by the laws of a particular state or locale, other than the laws of the state of Utah or federal laws of the U.S.) are or will be disclosed, absent a specific written agreement between Seller and Customer which requests that Seller either provide or arrange for specific analytical procedures and which agrees upon a price for such additional services. SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE ARTICLES, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR QUALITY, OR THEIR MERCHANTABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES OR FOR THE COST OF PROCUREMENT FROM THIRD PARTIES OF ANY SUBSTITUTE GOODS. IN ANY EVENT, SELLER'S MAXIMUM LIABILITY TO CUSTOMER FOR ANY CLAIM SHALL BE LIMITED TO PURCHASE PRICE PAID OR REPLACEMENT OF THE ARTICLES, AT SELLER'S SOLE DISCRETION. To the extent that Customer provides specifications for articles or Customer Materials, Customer warrants that such specifications do not infringe on the intellectual property rights of any third party, and will not result in a product which is harmful or dangerous or unfit for consumption, and agrees to indemnify and hold harmless Seller and its affiliates, officers, directors and employees, from and against any and all claims, liabilities or losses, including reasonable attorneys' fees and court costs (together, the "Claims") to alleged infringement of intellectual property rights or breach of this warranty. To the extent Customer provides Seller with ingredients or botanicals for processing and hold harmless Seller from and against any and all claims related to such ingredients or botanicals, including, without limitation, any allegation that contaminated, adulterated, mislabeled or otherwise misrepresented, or contain specified ingredients or components in excess of limits permitted by any applicable

11. **Insurance.** Customer will at all times relevant hereto maintain comprehensive general liability insurance in an amount not less than \$1 million per occurrence, \$2 million aggregate and will name Seller as an additional insured on such insurance policy. Customer will provide Seller a Certificate of Insurance naming Seller as an additional insured on such policy and shall have a continuing obligation to provide updated certificates of insurance to Seller at Seller's request.
12. **Security Interest.** Customer hereby grants, and Seller hereby reserves, a security interest in the articles until the purchase price has been paid, foreclosable in accordance with applicable law.
13. **Contingencies.** Seller will not be liable for any delay in performance or for nonperformance in whole or in part caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers.
14. **Requirements of Law; Indemnification.** Customer will not make any representations, warranties or guarantees with respect to the specifications, features, or capabilities of the articles that are inconsistent with the documentation accompanying the articles and these terms and conditions, including, without limitation, the disclaimer of warranties contained herein, or that are contrary to applicable law, or that are false or misleading. Customer will be solely responsible for, and will comply with, all laws and regulations of any state or province or country into which the articles are sold by Customer, or into which Customer knows or should know the articles will be shipped or sold by Customer or its customers, absent a written agreement with Seller to the contrary, including those laws which address, without limitation, (i) labeling of products and disclosure of content, or required or permissible product content, (ii) marketing, sales, distribution or pricing of products, and (iii) the United States Foreign Corrupt Practices Act (which prohibits certain payments to government officials or their agents or instruments). Customer will defend, indemnify and hold Seller harmless from and against any and all claims, demands, liabilities of whatever nature, and all damages, liabilities, costs and expenses, including attorneys' fees and costs, of any kind incurred in connection with any claim or action arising out of Customer's activities with respect to the articles.
15. **Governing Law.** The validity, construction and performance of this contract and the transactions to which it relates will be governed by the laws of the State of Utah without regard to conflict of law principles. All actions, claims of legal proceedings in any way pertaining to this contract or such transactions shall be commenced and maintained in the courts of Utah or in a federal court of the United States, in either case such court being physically situated in Utah.
16. **Other.** The rights accruing to Seller hereunder will be deemed to run to and be for the benefit of Seller and its affiliates, subsidiaries and/or parent entities.