



CAPITOL WHOLESALE MEATS, INC. d/b/a FONTANINI

STANDARD TERMS & PROVISIONS OF PURCHASE OF GOODS FROM FONTANINI

All purchase orders and/or orders for goods which are submitted or presented to Capitol Wholesale Meats, Inc. d/b/a Fontanini ("**Fontanini**") are subject to and incorporate the terms and provisions contained in this Standard Terms & Provisions of Purchase of Goods from Fontanini ("**Standard Provisions**"). In this **Standard Provisions**, "**goods**" refers to the goods described on any purchase order, contained in any order for goods, agreement and/or contract submitted or presented to Fontanini ("**Purchase Order**"). "**Agreement**" refers to any agreement or contractual relationship formed with **Fontanini** pursuant to any such **Purchase Order** and/or oral, written or electronic agreement and/or contract with **Fontanini** (individually or collectively "**Agreement**").

1. **Agreement.** Every **Purchase Order** and/or **Agreement** is subject to and incorporates this **Standard Provisions**. This **Standard Provisions** shall apply to all purchases of **goods** from **Fontanini**. **Fontanini's** acceptance of any and every **Purchase Order** and/or **Agreement** is limited to the acceptance of the express terms contained in this **Standard Provisions** by each purchaser of **goods** from **Fontanini** ("**Purchaser**"). If a conflict exists between this **Standard Provisions** and any provision of any **Purchase Order** and/or **Agreement**, then this **Standard Provisions** shall control. Any written or electronic offer and/or document of **Purchaser** which contains conflicting terms or provisions with this **Standard Provisions** is hereby not accepted and is rejected by **Fontanini**. This **Standard Provisions** shall apply to all **Purchase Orders** and/or **Agreements** submitted to **Fontanini**. This **Standard Provisions** shall supersede all oral, written and/or electronic terms, representations, agreements and other communications between **Fontanini** and any **Purchaser**, and this **Standard Provisions** may be only amended by a writing signed by a duly authorized officer of **Fontanini**. This **Standard Provisions** applies to the exclusion of any different or conflicting terms contained in any oral, written or electronic agreement, contract, proposal, acknowledgement and/or writing by either **Fontanini** and/or any **Purchaser**. Each **Purchaser's** (i) receipt of a written, facsimile and/or or electronic acknowledgement, confirmation, confirmation of sale and/or acceptance of a **Purchase Order** and/or **Agreement** from **Fontanini** and/or (ii) acceptance of any **goods** from **Fontanini**, whichever occurs, shall constitute and be deemed **Purchaser's** acceptance of this **Standard Provisions**.

2. **Delivery and Force Majeure.** Unless otherwise stated in the **Purchase Order** and/or **Agreement**, the **goods** shall be delivered F.O.B. **Purchaser's** facility identified on the face of the **Purchase Order** and/or **Agreement**, except that **Purchaser** may, at its option, take delivery of all or any part of the **goods** at **Fontanini's** facility. In the event that either **Fontanini** or a **Purchaser** is prevented from performing any obligation under this **Standard Provisions** or a respective **Purchase Order** and/or **Agreement** as a result

of (i) any war, civil disturbance, riot, or any governmental action as a result thereof; or (ii) any natural disaster or act of God; or (iii) any act of terrorism to the extent of which causes substantive damage to either party's production and/or storage facilities; or (iv) its inability to obtain raw materials or supplies as is dictated by economic conditions and/or governmental action; and provided that none of the foregoing is due to either of the respective party's negligence or willful misconduct, then such affected party shall provide written notice to the other and thereafter shall be excused from performing such obligation for so long as such condition reasonably exists. If such condition continues more than 30 days, either **Fontanini** or such **Purchaser** may terminate the respective **Purchase Order** and/or **Agreement**.

3. **Indemnity.** **Fontanini** shall indemnify and hold **Purchaser** and its directors, officers, agents and employees (collectively and individually "**Purchaser's representatives**") harmless (and defend **Purchaser** and **Purchaser's representatives**, if **Purchaser** requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and other legal expenses) brought against or incurred by **Purchaser** or its representatives because of (i) any breach by **Fontanini** of any of its warranties to, or agreements with, **Purchaser**, (ii) any claim that any of the goods or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world or (iii) any death, injury or damage to any person or property caused by **Fontanini's** manufacture of the respective **goods** or performance of **Fontanini's** services. **Purchaser** shall indemnify and hold **Fontanini** and its directors, officers, agents and employees (collectively and individually "**Fontanini's representatives**") harmless (and defend **Fontanini** and **Fontanini's representatives**, if **Fontanini** requests) as to any claims, liabilities, losses, damages and expenses (including, without limitation, attorneys' fees and other legal expenses) brought against or incurred by **Fontanini** or **Fontanini's representatives** because of or due to the negligent, reckless, willful, or intentional act(s) or omission(s) caused by **Purchaser**.

4. **Confidentiality and Non-Use.** **Fontanini** and **Purchaser** shall each maintain the confidentiality of and shall not disclose or use or permit to be disclosed or used or to be viewed by any third party, any of the other party's respective goods, any designs, specifications or recipes for the goods, or any information concerning either of **Fontanini's** or **Purchaser's** business, operations or activities, including, without limitation, information concerning either **Fontanini's** or **Purchaser's** respective present, future and/or proposed products, product developments, plans, strategies, finances, know-how, sales, customers and marketing or sales techniques ("**Confidential Information**"), except that either **Fontanini** and/or **Purchaser** may disclose **Confidential Information** to a third party to the extent disclosure is required by law or in order for either of **Fontanini** and/or **Purchaser** to perform its obligations under the respective **Purchase Order** and/or **Agreement**. If either **Fontanini** or **Purchaser** breaches or threatens to breach this paragraph, then other party's remedies at law will be inadequate. Therefore such other party shall have the right of specific

performance or injunctive relief or both, in addition to any and all other remedies and rights at law or in equity and such other party's rights and remedies shall be cumulative.

5. **Price Warranty.** **Fontanini** warrants that the prices for the goods sold to any **Purchaser** under any **Purchase Order** and/or **Agreement** are in compliance with all pricing laws and regulations. **Fontanini** makes no other or further representation whatsoever as to the prices **Fontanini** charges for any of the **goods** sold by **Fontanini** to any **Purchaser** under any **Purchase Order** and/or **Agreement**.

6. **Changes and Inspections.** **Purchaser** may, upon 14 days advance written notice to **Fontanini**, change a respective **Purchase Order** and/or **Agreement** as to (i) designs or drawings of or specifications for the goods or services, (ii) time or place of delivery or performance, (iii) method of packing or shipment or (iv) quantity of the goods or extent of the services. If any such change causes a change in **Fontanini's** cost or time of performance, then an equitable adjustment shall be made in the price or time for delivery or performance.

Purchaser may request **Fontanini**, at **Purchaser's** sole cost and with reasonable advance notice to **Fontanini**, to perform additional testing of the **goods** sold by **Fontanini** to **Purchaser** provided that such **Purchaser** has reasonable grounds for insecurity as to the quality of such **goods** manufactured by **Fontanini** and sold to or to be sold to **Purchaser**.

Unless otherwise required by law, **Fontanini** will not, at any time and/or for any reason, allow any **Purchaser** or any of **Purchaser's** agents or contractors to perform (i) any inspections of any **Fontanini** office, manufacturing and/or storage facility; and (ii) any testing of any goods or **goods** at any **Fontanini** office, manufacturing and/or storage facility.

7. **Purchase Orders.** Unless first approved by a writing signed by a duly authorized officer of **Fontanini**, **Fontanini** shall not be required to and will not accept any **Purchase Order** which is transmitted by the Electronic Data Interchange (“**EDI**”).

8. **Policies and Procedures.** Unless first approved by a writing signed by duly authorized officer of **Fontanini**, **Fontanini** shall not be required to and will not change, modify or alter any of **Fontanini's** current or future policies and/or procedures concerning its: (i) accounting, billing, invoicing, pricing, packaging, logistics, product preparation and manufacturing; (ii) receiving, confirming and/or accepting **Purchase Orders** and/or **Agreements**; (iii) prohibition of any fuel allowances, pricing/money deductions and discounts, flyers and/or demos; (iv) customer notifications; and (iii) **goods** and/or product ticketing, labeling, packing, listing, routing, scheduling, shipping, delivery, and unloading.