



**Meyer Burger (Americas) Ltd.  
Terms & Conditions of Sale**

- 1) **PRODUCTS.** Buyer agrees to buy, and Meyer Burger (Americas) Ltd agrees to sell, the products ("Products") described in a quote or, if none, pursuant to any acceptable orders placed by Buyer and governed by these Terms & Conditions of Sale. Any deviation from these Terms & Conditions of Sale must be expressly written on the face of any Order. To the extent Buyer provides any product specifications to MEYER BURGER (AMERICAS) LTD, Buyer grants MEYER BURGER (AMERICAS) LTD the right to use any such specifications to fill any orders placed by Buyer in connection therewith.
- 2) **ORDER AND ACCEPTANCE.** Buyer's orders must be in writing and accurately describe the products, price, delivery address, shipping term and payment terms. All orders must be confirmed by MEYER BURGER (AMERICAS) LTD by Order Confirmation to be accepted. If an order is not confirmed by MEYER BURGER (AMERICAS) LTD, it is not accepted.
- 3) **PRICE AND PAYMENT.** Prices and payments shall be in USD. Payment terms are defined in the Quote or accepted order. MEYER BURGER (AMERICAS) LTD may cancel or reschedule deliveries of products if Buyer fails to make any payment when due. Standard Terms are Net 30.
- 4) **FORCE MAJEURE.** MEYER BURGER (AMERICAS) LTD shall not be liable for any delays in the delivery of orders, due in whole or in part, directly or indirectly to fire, act of God, strike, shortage of raw materials, supplies or components, retooling and upgrading of technology delays of carriers, embargo, government order or directive, or any other circumstance beyond MEYER BURGER (AMERICAS) LTD's reasonable control.
- 5) **PENALTIES.** Once an Order is confirmed, if Buyer cancels or terminates the order less than thirty (30) days prior to the scheduled delivery date, a penalty of 20% of the unshipped product or remaining contract value shall be paid to MEYER BURGER (AMERICAS) LTD. For special order or made to order no cancellation accepted.
- 6) **DELIVERY TERMS AND TITLE TRANSFER.**
  - a) **All delivery dates and shipping schedules are subject to prior sales.**
  - b) **International.** All international deliveries shall be made FCA Incoterms 2010, Meyer Burger (Americas) Ltd., 5562 NE Clara Lane, Hillsboro, Oregon, 97124, USA, unless otherwise specified in the Quote or accepted Order. All fees, duties and other charges associated with the international shipment shall be allocated between the parties using the Incoterms 2010 definition.
  - c) **Domestic.** All domestic deliveries shall be FOB Origin at Meyer Burger (Americas) Ltd., 5562 NE Clara Lane, Hillsboro, Oregon, 97124. Buyer will be responsible for shipping, freight, and insurance charges. Buyer may provide MEYER BURGER (AMERICAS) LTD with an account number for collect shipments. Buyer must specify if the shipment priority is other than Ground. If Buyer does not specify a collect account number or priority level for shipment, MEYER BURGER (AMERICAS) LTD shall ship prepay and add the charges to the invoice with Ground priority level.
  - d) **Title Transfer.** Title to Products shall transfer from MEYER BURGER (AMERICAS) LTD to Buyer at MEYER BURGER (AMERICAS) LTD's loading dock.
- 7) **DOCUMENTATION.** MEYER BURGER (AMERICAS) LTD will provide documentation, as required, for shipment. If Buyer requires additional documentation, this requirement shall be communicated to MEYER BURGER (AMERICAS) LTD. MEYER BURGER (AMERICAS) LTD will provide such additional documentations as is reasonably requested and required by the Buyer.
  - a) **International.** MEYER BURGER (AMERICAS) LTD shall provide the following documentation: packing list, commercial invoice, MSDS as required, and payment invoice.
  - b) **Domestic.** MEYER BURGER (AMERICAS) LTD shall provide the following documentation: packing list, MSDS as required, and payment invoice.
- 8) **INSPECTION AND ACCEPTANCE.** Buyer must inspect delivered Products and report claims for any damages or shortages in writing within ten (10) days of delivery of the Products to Buyer's Facility. Products damaged during shipment due to MEYER BURGER (AMERICAS) LTD packaging problems or incorrect quantities shall be replaced by MEYER BURGER (AMERICAS) LTD at no cost to the Buyer, provided any damaged product is returned to MEYER BURGER (AMERICAS) LTD (MEYER BURGER (AMERICAS) LTD will pay for freight). This shall be Buyer's only remedy.
- 9) **RIGHTS IN DATA.** Buyer hereby recognizes that MEYER BURGER (AMERICAS) LTD retains all right, title and interest in:
  - a) all intellectual property rights in and to the Products,
  - b) all processes, methods, formula, ingredients, designs, procedures and other practices used by MEYER BURGER (AMERICAS) LTD or relating to the manufacture and sale of the Products, including all intellectual property rights therein, and
  - c) all of MEYER BURGER (AMERICAS) LTD's equipment and tooling used in the manufacture and sale of the Products, including all intellectual property rights therein. Buyer hereby assigns to MEYER BURGER (AMERICAS) LTD all right (including intellectual property rights), title and interest it may now or hereafter possess in and to the MEYER BURGER (AMERICAS) LTD technology and in any derivative works of and improvements to the Products and agrees to execute all documents, and take all actions, that may be necessary to effect such assignment. MEYER BURGER (AMERICAS) LTD is under no obligation to disclose any of the MEYER BURGER (AMERICAS) LTD technology to Buyer for any reason.
- 10) **WARRANTIES.** MEYER BURGER (AMERICAS) LTD warrants only that Products manufactured and supplied to Buyer hereunder shall conform to MEYER BURGER (AMERICAS) LTD product specifications. MEYER BURGER (AMERICAS) LTD makes no other express or implied warranty, statutory or otherwise, concerning any product, including, without limitation, any warranty of fitness for a particular purpose, any warranty of merchantability, or correspondence with any description or sample.
- 11) **REMEDIES.** Buyer's exclusive remedy for any cause of action arising out of buyer claims is, at buyer's option, (a) a claim for credit which in no event will exceed the price paid for the specific Products as to which the claim is made or (b) replacement with conforming Products. In no event shall MEYER BURGER (AMERICAS) LTD be liable for any special, consequential, incidental, indirect, or punitive losses or damages attributable to the sale of the product under this agreement or to any other matter arising out of or relating to this agreement. MEYER BURGER (AMERICAS) LTD shall have no liability for any failure or delay due to matters beyond its reasonable control or for Products not maintained in accordance with the Recommended Storage and Handling Instructions, as applicable.
- 12) **INDEMNIFICATION.** Buyer shall indemnify and hold harmless MEYER BURGER (AMERICAS) LTD from all losses, claims, damages, expenses or liabilities of any kind (including attorney's fees and court costs) resulting from or arising out of any use by Buyer of the Products.
- 13) **CONFIDENTIALITY.** Buyer agrees that all non-public information furnished to Buyer by MEYER BURGER (AMERICAS) LTD, including any variations in pricing from MEYER BURGER (AMERICAS) LTD's standard prices for Products, is confidential information and such confidential information shall not be used or disclosed by Buyer without MEYER BURGER (AMERICAS) LTD's prior written consent. Buyer shall enforce against its employees and agents these obligations of confidentiality.
- 14) **EXPORT REGULATIONS- DIVERSION.** This product was exported from the United States in accordance with the Export Administration Regulations (EAR). Diversion contrary to United States Law is prohibited.
- 15) **APPLICABLE LAW, VENUE.**
  - a) **International.** Quotes and resulting Orders shall be governed by and construed under the laws of Hong Kong without regard to conflicts of laws principles thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Any dispute or controversy arising from or in connection with this Agreement or the execution thereof shall be settled by arbitration in a neutral venue under the rules of the International Chamber of Commerce. The award to be rendered shall be final and binding upon both parties. The parties expressly waive the jurisdiction of any foreign court. The official language of this Agreement is English.
  - b) **Domestic.** Quotes and resulting Orders shall be governed by and construed under the laws of the State of Delaware.
- 16) **ORDER OF PRECEDENCE.** These Terms and Conditions of Sale shall supersede all other terms and conditions that are generated from Buyer on any order or other documentation between MEYER BURGER (AMERICAS) LTD and Buyer. The failure of MEYER BURGER (AMERICAS) LTD to enforce at any time any of the provisions of these Terms and Conditions of Sale shall not be construed to be a waiver of such provisions nor the right of MEYER BURGER (AMERICAS) LTD to enforce such provisions in the future. Any prohibited assignment shall be null and void. If any provision of these Terms and Conditions of Sale are found to be invalid or unenforceable in any respect the validity and enforceability of the remaining provisions shall not be affected. The parties may only modify these Terms and Conditions of Sale in writing, explicitly stating these Terms and Conditions of Sale are superseded, and the changes shall be signed by both MEYER BURGER (AMERICAS) LTD and Buyer to be valid.