

Purchase Terms and Conditions

Region: Canada

Updated: February 5, 2025

1. These Purchase Terms and Conditions (“**Purchase Terms**”) shall govern each and every purchase and sale of goods or services from the Companies. “**Company**” and together “**Companies**” include Gordon Food Service Canada Ltd., Fresh Ex Inc., Neptune Fresh Produce Inc., Fresh Start Foods Canada Ltd., Liberio Seafood Inc., United Trimmen Ltd., Intercity Packers Ltd., Montcalm Meats Inc., J.G. Rive-Sud Fruits & Legumes Inc., Macgregors Meat & Seafood Ltd., and any future subsidiaries or affiliates of the foregoing companies. **It is a condition of this agreement and the purchaser of the goods (“Customer”) expressly agrees that the Customer shall look solely to the Company that provides the goods and services with regard to any matters relating thereto, and the rights and obligations of all other entities comprising the Companies hereunder shall not be affected thereby. In consideration of the goods and services provided hereunder, the Customers waives any legal right or other right to recourse from such other entities comprising the Companies in connection with any and all matters arising out of such transactions.** Any defined terms used in these Purchase Terms but not defined herein, shall have the meaning given to such defined terms in the Customer Account Application submitted by the Customer (the “**Application**”).
2. A Company may provide goods that it does not directly manufacture (“**Indirect Goods**”). The availability of Indirect Goods does not indicate an affiliation with or endorsement of any Indirect Goods or manufacturer of any Indirect Goods. Only the warranty, if any, provided by the original manufacturer of any Indirect Goods shall apply. For all other goods that are not Indirect Goods, only the written warranty made in a signed written agreement of such Company shall apply. **EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2, THE COMPANIES EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING AS A RESULT OF CUSTOM, USAGE IN TRADE, OR BY COURSE OF DEALING WITH RESPECT TO ANY GOODS.**
3. The price of goods or services offered by a Company may not include delivery. If the price offered is not a delivered price, a separate delivery fee will be charged on the invoice. The price of goods or services does not include sales tax or any governmental assessments or fees that may apply. Unless the Customer is otherwise exempt, sales tax and governmental assessments or fees that may apply will be charged as a separate line item on the invoice. The Companies may charge, as a separate fee, a diesel fuel surcharge based on the average cost of diesel fuel. The Customer’s acknowledgement of a delivery of goods shall be indication that Customer has accepted the goods and agreed to pay the full amount of the invoice for the goods. If payment by credit card is offered to Customer and Customer elects to pay a Company by credit card, the Company may, in the Company’s sole and absolute discretion, elect to assess a surcharge on such payments up to the maximum rate permitted by the applicable payment network rules and applicable law.
4. Past due invoices are subject to a SERVICE CHARGE of an ADDITIONAL CHARGE OF 1.5 PERCENT PER MONTH OR 18 PERCENT PER ANNUM assessed once a month. If any payment made to a Company is dishonored for any reason, the Company may assess a fee for each such dishonored payment (“**Return Fee**”) and: (a) re-present the related payment and issue a draft against the account upon which such payment was drawn for the Return Fee, or (b) deem such payment dishonored without re-presentation and charge the Return Fee to the Customer’s account.

5. The signature of the Customer's employee collected at the time of delivery of goods is indisputable evidence that all goods on the invoice were received in the listed quantities. The Customer acknowledges that the sale of goods or services may be done by electronic transactions. In the event of an electronic transaction, the Customer agrees to the electronic storage of its signature given at the point of sale or the time of delivery and agrees to the later use of such signature on an itemized invoice or other document evidencing the transaction. The Customer agrees that the itemized invoice or other documents evidencing the transaction, although presented in a different format than the document received at the point of sale or time of delivery, memorializes the order and acceptance of goods from a Company by the Customer pursuant to these Purchase Terms and the terms of the Application.
6. All returns shall be subject to the delivering Company's return policy (available upon written request) and will be assessed a restocking fee of 15%, unless the Company and the Customer agree to a different restocking fee in writing. Any claims for damaged, undelivered or non-conforming goods are waived unless the Customer makes such claim and is issued a credit at the time of delivery and prior to the Company's delivery driver leaving the delivery location. In the event of a Key Drop delivery by a Company, any claims for damaged, undelivered or non-conforming goods must be made no later than 3:00 p.m. (local time) the day after delivery. A "**Key Drop**" is a delivery made by a Company during the Customer's non-business hours. If any goods or services are defective, the Customer's sole and exclusive remedy shall be limited to replacement of the defective goods or services, or a refund of the purchase price, plus applicable taxes, of any such goods or services.
7. A Company may assign and/or sell any accounts receivable or indebtedness owed by the Customer and, in the event of such assignment and/or sale (or any subsequent assignment or sale) any claims, defenses, and counterclaims of every kind and description that the Customer has against the Company is waived as to any transferee, assignee or pledgee. Further, the Customer waives any request for demand for payment, notice of non-payment, presentment, notice of dishonor, protests, notice of protest or any other notice or demand in connection with any account opened with a Company.
8. The Companies are not liable for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, including, but not limited to, attorneys' fees, lost profits or revenues or diminution in value, regardless of: (a) whether such damages were foreseeable, (b) whether or not the Companies were advised of the possibility of such damages, and (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based.
9. If the Customer is a franchisee or member of a group purchasing organization (each, an "**Organization**") and the Customer is purchasing from a Company under a written agreement between a Company and the Organization, then the Customer agrees to abide by and accepts all terms of such agreement as modified, amended or superseded from time to time.
10. Any information or data accumulated by the Companies with respect to the goods or services supplied to the Customer ("**Purchasing Information**") is owned by the Companies. The Companies retain all right, title and interest in the Purchasing Information. The Customer consents and authorizes the Companies to collect, process, use and share Purchasing Information for any lawful business purpose.
11. By entering into the Application, Customer and any Guarantor expressly consent to each Company's processing of data, including personal information, as set forth in the privacy policy posted <https://gfs.ca/en-ca/privacy-policy/> and specifically in connection with personalized marketing communications. Customer and/or Guarantor may opt-out at any time by following the instructions on the marketing communication, sending an email to privacy@gfs.com, or visiting the Privacy Center at gfs.ca.

12. All inventory of finished and unfinished proprietary goods or goods special ordered (or manufactured) for the Customer or goods not normally stocked, but brought into inventory to service the Customer, must be immediately purchased if the Customer ceases to use such goods or discontinues doing business with the Company stocking the goods.
13. The Customer agrees that all actions or proceedings arising out of or related to the goods or services provided by a Company shall be litigated and subject to the venue of any court of proper jurisdiction that a Company selects in its service territory. The Customer consents and submits to the personal jurisdiction of any such court. To the extent permitted by law, the Customer waives any right it may have to change the venue of any litigation brought against the Customer and also **WAIVES TRIAL BY JURY**.
14. In the event any provision of these Purchase Terms or the Application are held to be invalid, unenforceable or illegal, the other provisions shall remain fully enforceable. The terms and conditions of the Application may only be amended by a written instrument signed by the Companies and the Customer. These Purchase Terms may be amended by the Companies on one or more occasions by posting an amended and revised version at <https://gfs.ca/en-ca/purchase-terms-and-conditions/>.
15. The parties have agreed that the Application, as well as any document or instrument relating to it, be drawn up in English only. *Les parties aux présentes ont convenu que la présente Application, ainsi que tous autres actes ou documents s'y rattachant, soient rédigés en anglais seulement.*