



CUSTOMER TERMS AND CONDITIONS

Atkins®, Quest®, and OWYN® Products

THESE CUSTOMER TERMS AND CONDITIONS SUPERSEDE ANY INCONSISTENT OR ADDITIONAL TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER OR OTHER CUSTOMER SUPPLIED FORMS.

The following terms shall apply to all retailers and distributors purchasing Atkins, Quest, and OWYN products distributed by Simply Good Foods USA, Inc. and affiliates, including but not limited to Quest Nutrition, Inc. (“Seller”).

In this document, “Product” shall mean Atkins, Quest, and OWYN products collectively.

Sale Conditions. As used herein, the term “Seller” shall mean Simply Good Foods USA, Inc. and its affiliates, as applicable, and the term “Customer” shall mean the person, firm, entity or corporation purchasing goods supplied by Seller, whether pursuant to a Purchase Order (defined below), electronic data system, or otherwise (hereinafter “Products”). These terms and conditions of sale (hereinafter “Sale Conditions”) apply to and are deemed to be incorporated in all purchases and sales of the Products, and all descriptions, quotations, proposals, offers, acknowledgements, acceptances and sales are subject to and shall be governed exclusively by these Sale Conditions. Customer’s acceptance of any offer is limited to these Sale Conditions, which shall prevail over all terms and conditions (if any) proposed by Customer, including any terms and conditions contained on quotations, purchase orders or other documents issued from Customer (hereinafter “Purchase Order(s)”). No such additional or inconsistent terms or conditions proposed by Customer shall become part of the agreement between Customer and Seller, unless expressly accepted in writing by Customer and Seller, which writing must specifically reference these Sale Conditions and the specific provision herein that such parties are agreeing to supersede or amend. Seller hereby rejects any proposed additional or inconsistent terms that do not meet the foregoing requirements. Without limiting the foregoing, these Sale Conditions shall not be supplemented by any trade usage, course of prior dealings or acquiescence in any course of performance.

Customer Approval. New retail or distributor customers must be authorized by Seller and establish a customer account in Seller’s accounting system before orders can be received and accepted.

Price; Taxes. The current Product price list is available from your local Seller sales representative. All prices listed and quoted by Seller are exclusive of any federal, state or municipal sales, use or other similar taxes which Seller may be required to collect or pay upon sale or delivery of the Products to Customer, and Customer shall be solely responsible for payment of such taxes (excluding, for the avoidance of doubt, taxes based on Seller’s income). All taxes shall be paid by Customer, unless Customer provides Seller with an exemption certificate acceptable to the relevant taxing authority; however, Seller may elect to pay any such taxes directly, in which event Customer shall repay Seller promptly after invoicing therefor.

Payment Terms. Credit terms may be requested subject to approval by the Seller’s Finance Department. Customers wishing to obtain credit terms must submit a Credit Application, a Federal Tax ID#, and five (5) trade references including contact name and email address. Processing time is approximately seven (7) to ten (10) business days from receipt of completed Credit Application. Credit terms will be established or denied in Seller’s sole discretion. Customer will be notified of credit terms and credit limit if credit terms are approved.. If, despite any default by Customer, Seller elects to continue to make shipments of the Products, Seller's action in so doing shall not constitute Seller’s waiver of any default by Customer or in any way prejudice Seller's legal remedies for such default. Seller shall be entitled at any time to set off any sums owing by Customer to Seller against any sums payable to Customer, if applicable. Prior to credit approval, Seller’s payment terms are cash in advance. Following approval of credit terms by Seller in accordance with its internal policies, payment terms of the gross invoice amount shall be net thirty (30) days from the date of Seller’s invoice, unless otherwise agreed to by Seller in writing. Seller reserves the right to modify, suspend or terminate, at any time and for any reason, any credit terms previously extended to Customer. Additionally, Seller may at any time decline to make any shipment or delivery except upon receipt of payment or upon terms and conditions satisfactory to Seller. All amounts are stated and payments are to be made

in US Dollars unless otherwise agreed in writing. If Customer specifies a currency other than US Dollars, Seller reserves the right to amend the quoted price by any amount to cover movements in the exchange rate between the currency of Customer's quotation and US Dollars arising between the time of quotation and acceptance of the Purchase Order. If any payment is overdue, Seller shall be entitled, without prejudice to any other right or remedy, to suspend all further deliveries to Customer without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate, or if none then at the rate of twelve percent.

Seller terms are standard net thirty (30) days, from the date of invoice. Payments are due and payable on their due date, as determined by Seller's payment terms, in the full amount of the invoice, net of pre-approved allowances, credits or deductions. Allowances, credits, or deductions that have not been pre-approved by an authorized Seller representative, in writing, shall not be deducted from an invoice amount. Unauthorized deductions from invoice amounts shall be deemed Late Payments or Non-Payments as defined below.

Late Payment and Non-Payment. "Late Payment" of an invoice is defined as a payment, in an amount of less than the full amount of the invoice (net of pre-approved deductions), received from a Customer more than ten (10) calendar days but not later than thirty (30) calendar days after the due date for payment.

"Non-Payment" of an invoice is defined as a payment received from a Customer in an amount of less than the full amount of the invoice (net of pre-approved deductions), or a Customer's failure or refusal to pay an invoice in full (net of pre-approved deductions), for any reason on or before the date that is thirty (30) calendar days after the due date for payment of the invoice.

Seller reserves the right, exercisable in its sole discretion, to modify or rescind credit terms; to refuse purchase orders; to allocate Product; or to de-list a Customer after three (3) Late Payments during a calendar year, or upon the occurrence of any one (1) Non-Payment.

Default and Cancellation. In the event of Customer's default in payment for the Products purchased hereunder, Customer shall be responsible for all reasonable costs and expenses incurred by Seller in collection of any sums owing by Customer, including reasonable attorneys' fees, and Seller shall not be obligated to make any further deliveries to Customer. Should Customer elect to cancel an order, in whole or in part, Customer shall be liable to Seller for reasonable cancellation charges which shall include but not be limited to all costs and expenses incurred by Seller in connection with procuring and filling Customer's Purchase Order. Cancellations will not be accepted after shipment of any Products to Customer.

Minimum Orders/Lead Time. Seller requires a minimum purchase order of \$2,500.00 for each Customer order. Each Customer order must designate a single "ship to" point. Orders designating multiple "ship to" points will be rejected in their entirety. If Customer cannot meet Seller's minimum order requirement to purchase directly from Seller, Customer may be able to establish a relationship with an authorized distributor. Contact your Seller Sales Representative for details.

Backorder Policy. Seller does not issue backorders for a Product that are not available at time of shipment. In the event a certain Product SKU is not available in time to ship to meet the Requested Arrival Date (RAD), the SKU will be cut from the order and the balance of the order shipped. If a Product is not available in sufficient quantities to fulfill a Customer's order, Seller may, in its sole discretion, cut the SKU entirely or allocate the SKU by shipping less than the ordered quantity. Customer will be notified of cuts to a Purchase Order prior to delivery. Customer must place a new Purchase Order for any SKUs cut from a prior purchase order.

Product Dating. The shelf life for all Products is twelve (12) months from date of manufacture and is set forth on the package as a "Best by" date. Seller will fulfill orders with SKUs that have a minimum of six (6) months remaining shelf life at time of delivery to the Customer, or if Customer receives Products from a distribution center, then six (6) months from the date of delivery to Customer's distribution center or warehouse.

Delivery and Title. Delivery terms are FOB Destination (origin) unless otherwise specified by Seller in writing. Customer will supply Seller with delivery instructions promptly on notification to Customer that the Products are

ready for shipment. If delivery instructions are not received or if Customer requests that a shipment be postponed for more than ten (10) days after the date Customer is notified that the Products are ready for shipment, Seller shall, at Seller's option, be entitled to make arrangements for storage of the Products at Customer's risk and expense, and to charge Customer accordingly for all related costs and expenses. In such case, Seller's obligation to deliver the Products will be deemed satisfied, and Customer will become responsible for the risk of loss of, or damage to, the Products and for paying the full purchase price. In addition, delivery of the Products to a common carrier or licensed trucker shall constitute delivery to Customer, and all risk of loss or damage in transit shall be borne by Customer. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Customer of its obligation to accept remaining deliveries.

Product Returns. Product returns shall be handled as follows:

- All requests to return Products to Seller require a Return Authorization ("RA"), which must be requested by Customer no later than twenty (20) days after delivery of an order.
- Requests for RAs shall include the Purchase Order number covering the Product for which the RA is requested and specify, in detail, the reason for returning the Product.
- RAs requested for Products damaged during shipment shall be submitted by Customer upon completion of inspection of a shipment, but no later than ten (10) days after receipt of shipment at the point of delivery. Visible damage must be photographed and photographs submitted with the request for a RA.
- Seller will not issue RAs, or accept Products returned without an RA, for (i) Customer's errors in ordering, (ii) Customer over-stock, (iii) Products with a shelf-life of less than thirty (30) days prior to the "Best-by" date; or (iv) Products with an expired shelf-life.
- Customer may request a RA more than twenty-one (21) days after delivery of an order for extraordinary circumstances. Such requests must be initiated through your Seller Sales Representative and are subject to review and final approval by Seller, which may be refused in Seller's sole discretion.
- Customer shall be responsible for all costs of Product handling and return freight for Products returned to Seller pursuant to an approved RA.

Unloading Time. For all prepaid shipments (Seller paid freight) Customer must unload/sort Product and release the driver within two (2) hours from the scheduled delivery appointment time. In the event a driver is not released within three (3) hours from the scheduled delivery appointment time, Customer may be charged a fee subject to Seller's sole discretion.

Acceptance. Customer will be responsible for the prompt unpackaging, unloading and inspection of all Products upon arrival. All Products sold by Seller hereunder shall be deemed irrevocably accepted by Customer, unless within ten (10) days from the shipment date, Customer notifies Seller in writing that such Products are damaged, defective, or shipped in error. Damaged Products and packaging must be kept for inspection by Seller and/or the carrier. Any claims for shortages must be made to Seller in writing within ten (10) days from receipt of the Products at issue and noted on the bill of lading at the time of delivery.

Returns. All returns must be authorized by Seller. A RA number issued by Seller must accompany all returned Products.

Shipping Errors. Customer must notify Seller about shipping errors (incorrect shipments, overages, shortages, etc.) as soon as possible after receipt of an incorrect shipment, but no later than ten (10) days after delivery of the shipment. Resolution of shipping errors will be determined on a case-by-case basis. Seller is not responsible for Customer's overstock, out of date, or slow-moving items. Returns of such items will not be accepted and Customer may not receive credit for these items.

Refused Delivery/Missed Appointments. If Customer, or its representative at a warehouse or distribution center receiving shipments for the benefit of Customer, refuses to accept delivery of a shipment and the shipment is returned to Seller, Customer will be charged a restock and return fee in an amount equal to twenty (20%) percent

of the gross invoice amount for the returned shipment, and Seller shall treat any such refused delivery as a Non-Payment and may exercise its rights and remedies for Non-Payment, as set forth above, in addition to any and all other rights and remedies Seller may have as a matter of law.

Product Diversion. Seller will not accept Customer returns, or requests for RAs, for any Seller Products obtained from sources other than directly from Seller or from an authorized Seller distributor. Further, Seller reserves the right, exercisable in its sole discretion, to refuse to do business with any Customer, entity, or person that Seller reasonably believes is engaged directly or indirectly in diverting product. Examples of product diversion include, but are not limited to, selling or delivering for resale Seller Products (i) that have an expired shelf-life, (ii) for which Seller has refused to issue an RA, (iii) that have been damaged during shipment (Products damaged during shipment shall not be released or delivered to an insurance company or any person or entity that sells damaged or salvaged goods), (iv) to any person or entity that sells freight damaged or salvaged goods, (v) to any person or entity that receives goods for sale on consignment, (vi) for delivery or resale outside the continental United States, (vii) to any person or entity that has not been approved to purchase Seller Products directly from Seller or one of its authorized distributors, (viii) to any person or entity doing business as a ship chandler, or (ix) to any non-profit or charitable organizations without the prior written consent of Seller.

Product Recall, Hold or Recovery. If it is deemed necessary at any time by Seller or any governmental agency or body to recall, hold or recover any quantity of any Products for any reason, Customer will comply diligently with the reasonable instructions of the Seller or the applicable governmental agency or body. If Customer fails or refuses to promptly comply with the recall, hold or recovery upon request by Seller, Seller shall take such action as it deems necessary to execute the recall, hold or recovery.

Warranty; Disclaimer. Seller hereby warrants that, upon shipment, the Products shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act. Notwithstanding the foregoing, no other warranties whatsoever are offered for the Products under these sale conditions (“Seller Warranty”). Therefore, Seller hereby expressly disclaims and Customer expressly waives: (i) any statutory or implied warranty of merchantability or fitness for any purpose, (ii) any implied warranty arising from course of dealing, course of performance or trade usage, and (iii) any other warranty, right, claim, or remedy whatsoever of Customer or any other person, customer, or purchaser claiming by, through, or under Customer against Seller arising pursuant to Seller’s Warranty or these sale conditions or any agreement pertaining to the Products, or arising pursuant to indemnity, tort (including, but not limited to, negligence), products liability or strict liability, or otherwise. No agreement varying or extending Seller’s Warranty or the remedies, exclusions, or limitations set out in Seller’s Warranty shall be effective unless signed by an authorized executive officer of Seller.

Customer Spin Reports and e-Commerce. With exception of Customer’s own website, unless authorized by Seller, Customer may not sell any Products to or on online retail marketplaces, such as but not limited to Amazon.com or Walmart.com, and may not distribute to other vendors that Customer believes may resell to or on online retail marketplaces. Customer is required to provide spin reports upon request.

Post Audit Deductions. Seller will not accept any post audit deductions that are over twenty-four (24) months old.

Security Interest; Insurance. Until payment is made in full by Customer, Products shall be held by Customer as bailee for Seller and be kept readily identifiable as Seller’s property. Customer agrees that Seller shall retain a purchase money security interest in all Products sold to Customer (the “Collateral”), and to any proceeds from the disposition of such Collateral until the purchase price due Seller shall has been paid in full. Upon any default by Customer hereunder, Seller shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative. Prior to full payment of the purchase price, Customer shall keep insured the Products shipped by Seller to Customer under adequate insurance policies with such provisions, for such amounts and with such insurers satisfactory to Seller, but in no case in an amount less than the purchase price of such Products.

Intellectual Property. Ownership of all intellectual property rights in the Products shall be and remain owned by and vest exclusively with Seller or its licensors. Customer shall not reverse engineer, disassemble, or otherwise

attempt to rebuild or recreate the Products. Seller's trademarks and names shall not be used otherwise than in reference to, and as applied by Seller to the Products. Further, if Seller objects to any use of its marks or names, upon notice to Customer of the objection, Customer shall cease and desist from such use. Any and all use of Seller's marks or names by Customer shall inure to the exclusive benefit of Seller.

Indemnification. Customer shall indemnify, defend, and hold harmless the Seller and its respective affiliates, and each of their respective directors, officers, shareholders, agents, and employees, and any other related individual or entity, from any and all liabilities, losses, costs, expenses, reasonable attorneys' fees, damages, medical costs and treatments, death, or injury from, or arising out of (a) the failure by Customer to obtain insurance coverage as set forth herein; (b) any breach of this Agreement by Customer; or (c) any action or omission by Customer or Customer's representatives, whether negligent, intentional, reckless, or otherwise. Notwithstanding the foregoing, the limitations in this Section do not apply to breaches of confidentiality obligations, or claims based on gross negligence or willful misconduct.

Limitations on Liability. REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE), IN NO EVENT (i) SHALL SELLER'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC PRODUCTS COMPLAINED OF, WHICH IN NO EVENT SHALL EXCEED THE TOTAL AMOUNT PAID FOR SUCH PRODUCTS, OR (ii) SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS OR REVENUES, DAMAGE OR DESTRUCTION OF PROPERTY).

Compliance with Laws. Customer represents and warrants that it shall (i) comply fully with all applicable laws, ordinances and regulations relating to its purchase and sale of the Products, including those related to product labeling and packaging, occupational safety, and health and protection of the environment, (ii) neither take nor refrain from taking any action that could result in liability for either party or their respective affiliates under any applicable laws, ordinances or regulations, including, without limitation, any Anti-Corruption Laws, and (iii) promptly notify Seller of any mandatory, applicable law, ordinance or regulation that conflicts with the provisions of these Sale Conditions, any agreement between the parties or Customer's practices. "Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act, the OECD Anti-Bribery Convention, the UK Bribery Act 2010, any other applicable anti-bribery law or treaty, those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control and the U.S. Commerce Department's Bureau of Industry and Security relating to trade sanctions and export controls (including, without limitation, 31 C.F.R. Chapter V and 15 C.F.R. Parts 730 et seq.), Section 999 of the U.S. Internal Revenue Code and implementing rules and regulations of any of the foregoing.

Confidentiality. Each party acknowledges and agrees that each may be disclosing to the other confidential or proprietary materials and other confidential or proprietary information that may be properly marked or identified as confidential or proprietary ("Confidential Information") which, if improperly used or disclosed by the receiving party, could cause irreparable harm to the disclosing party. Each party agrees to maintain the other party's Confidential Information as confidential, and not to directly or indirectly disclose or reveal it to any third party, or use it for any purpose, except for purposes of these Sale Conditions or as required by a court or governmental authority of competent jurisdiction, after first notifying the disclosing party of such disclosure requirement.

Compliance with Seller Policies. The Customer shall comply with any policies governing the purchase and sale of Products, including but not limited to the [Authorized Resale Policy](#) as provided and as updated by the Seller from time to time.

Customer's Resale of Goods. Customer agrees that it and any of its accounts, customers or retailers shall not knowingly and intentionally offer, list or sell any Products on or to any third party online marketplaces or otherwise participate in any offering of the Products to said online marketplaces or otherwise participate in any offering of the Products to said online marketplaces including but not limited to Amazon.com, Walmart.com, Ebay.com, Google.com, Target.com, and/or Costco.com, in each case, without the prior written consent of Seller. Failure to comply with the terms of this section shall result in immediate termination or suspension of Customer's account.

Customer agrees to cause its accounts, customers, and retailers to comply with the terms of this section.

Force Majeure. Seller shall be excused for any delay in performance due to acts of God, acts of war, fires, floods, accidents, mill conditions, labor disputes, delays in transportation, epidemic, pandemic, quarantine, delayed issuance of export control licenses, or any circumstance or cause beyond the control of Seller in the reasonable conduct of its business. In the event of such delay, the date of shipment shall, at the option of Seller, be deferred for a period equal to the time lost by reason of the delay or otherwise for a reasonable time.

Governing Law and Venue. These Sale Conditions and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the internal laws of the State of Colorado and the United States of America, without regard to choice of law principles. The United States District Court for the District of Colorado and the state courts sitting in Denver, Colorado shall be sole venues for any dispute arising directly or indirectly from the relationship created or the transactions contemplated by these Sale Conditions. Each of the parties consent to the jurisdiction and venue of such courts and waives any argument that any such courts do not have jurisdiction over such party or such dispute or that venue in any such forum is not appropriate or convenient. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to these Sale Conditions.

Modification and Waiver. These Sale Conditions may be modified by Seller in its sole discretion at any time. However, before any modified terms go into effect, Seller shall provide thirty (30) days' notice to Customer of such modified terms. Any acceptance, use or sale of the Products by Customer (unless Customer objects to any modified terms in writing to Seller) after such thirty (30) day notice period constitutes Customer's acceptance of such modified terms and conditions. Seller's failure to object to provisions contained in any communications from Customer shall not be deemed a waiver of the provisions of these Sale Conditions.

Severability. If any provision of these Sale Conditions shall be deemed invalid or unenforceable, these Sale Conditions shall be construed as though such provision does not appear herein and shall be otherwise fully enforceable.

Notices. All notices, consents, demands, and other communications with respect hereto shall be in writing and sent by first class mail, express mail, or courier, postage prepaid, to Simply Good Foods USA, Inc., 1225 17th Street, Suite 1000, Denver, Colorado 80202, Attention: General Counsel, and if to Customer, as indicated on the face of the Purchase Order or electronic data transmission.

Entire Agreement. These Sale Conditions constitute the entire agreement between Seller and Customer relating to the purchase and sale of the Products. Customer represents that the person placing the Purchase Order on Customer's behalf has the full authority to do so.

Successors and Assigns. These Sale Conditions and the rights of Customer hereunder shall not be assigned by Customer without Seller's prior written consent, which shall not be unreasonably withheld or delayed. Seller may assign these Sale Conditions and the rights of Seller hereunder upon written notice to Customer. These Sale Conditions will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.



Mike Clawson
Chief Customer Officer