



Good food. Responsibly.®

CONTINUING PRODUCT GUARANTY

This Continuing Product Guaranty (this “Guaranty”) is made by SMITHFIELD PACKAGED MEATS CORP. and SMITHFIELD FRESH MEATS CORP. (“Seller”) in favor of Pacific Food Distributors (“Buyer”).

1. Seller warrants to Buyer that all products that Seller sells to Buyer (“Products”) are at the time of delivery to Buyer: (a) not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and its regulations (the “FD&C Act”), or within the meaning of any state food and drug law with identical or substantially the same adulteration and misbranding provisions as found in the FD&C Act; (b) not articles that may not be introduced into interstate commerce under the provisions of the FD&C Act or any successor thereto; and (c) in compliance with all other applicable federal, state, and local laws and regulations. However, with respect to Products sold under Buyer’s brand label, Seller’s responsibility for branding or misbranding is limited to direct damages resulting from the Product’s failure to conform to the Buyer’s specifications or labels that Buyer furnished to Seller. **TO THE FULLEST EXTENT ALLOWED BY LAW, THE WARRANTIES IN THIS PARAGRAPH 1 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER MAKES NO WARRANTY AS TO MERCHANTABILITY OR FITNESS OF PRODUCTS FOR ANY PARTICULAR PURPOSE.**

2. Seller shall indemnify, defend, and hold harmless Buyer from and against liabilities, losses, claims, demands, and judgments brought against or incurred by or on behalf of Buyer arising out of (a) Seller’s breach of any warranty in paragraph 1 or (b) the injury, illness, or death of any person or damage to any property caused by any Products; provided, Seller has no obligation to Buyer to the extent Buyer’s damages are caused by (i) damage or change to any Products occurring after delivery to Buyer or (ii) the negligence or willful misconduct of an agent or employee of Buyer or any third party.

3. Seller’s obligations in paragraph 2 are conditioned on (a) Buyer providing immediate notification to Seller of any third party claim, action, suit, or proceeding against Buyer (a “Third Party Claim”) and (b) Seller’s control of the required defense, including selection of counsel. Buyer’s settlement of any Third Party Claim without Seller’s express written consent shall render this Guaranty null and void.

4. Seller’s liability to Buyer under this Guaranty is limited to Buyer’s actual, direct damages. Seller will not be liable to Buyer for special, indirect, consequential, punitive, or exemplary damages, or for attorneys’ fees and costs Buyer may incur.

5. This Guaranty continues in effect with respect to all Products purchased or ordered by Buyer prior to Buyer’s receipt of written notice of its revocation from Seller. This Guaranty revokes any prior guaranties provided by Seller and may be amended only with Seller’s written consent.

Date: 01/09/2019

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