



nativeme.com

ACCOUNT APPLICATION AND CREDIT AGREEMENT

10 Bradley Drive
Westbrook, ME 04092
Phone: 207.856.1100
Fax: 207.856.1101

SECTION 1 - BUSINESS INFORMATION			
TYPE OF BUSINESS	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Limited Liability Company		TAX ID NO:
FULL LEGAL NAME OF APPLICANT		JURISDICTION OF FORMATION (IF APPLICABLE)	
OWNER'S NAME		LENGTH OF OWNERSHIP	
BILL TO		SHIP TO	
BUSINESS NAME		TRADE NAME	
ADDRESS		ADDRESS	
CITY, STATE, ZIP		CITY, STATE, ZIP	
A/P CONTACT NAME		ORDER CONTACT NAME	
PHONE		PHONE	
FAX		FAX	
CELL		CELL	
EMAIL ADDRESS		EMAIL ADDRESS	
EMAIL PREFERENCES	<input type="checkbox"/> Statements <input type="checkbox"/> News/Alerts <input type="checkbox"/> Online Services		EMAIL PREFERENCES <input type="checkbox"/> Statements <input type="checkbox"/> News/Alerts <input type="checkbox"/> Online Services
SECTION 2 - TRADE REFERENCES			
BUSINESS NAME	BUSINESS NAME	BUSINESS NAME	
ADDRESS	ADDRESS	ADDRESS	
CITY, ST, ZIP	CITY, ST, ZIP	CITY, ST, ZIP	
PHONE	PHONE	PHONE	
CONTACT NAME	CONTACT NAME	CONTACT NAME	
SECTION 3 - AUTHORIZATION			
<p>The applicant named herein ("Buyer") hereby certifies that the information furnished under this Account Application and Credit Agreement (this "Agreement") is true and correct and that this information is being furnished to Native Maine Operations, Inc. d/b/a Native Maine Produce & Specialty Foods ("NMPSF") for the purpose of inducing NMPSF to extend credit to Buyer, and Buyer understands that NMPSF intends to rely upon such information. Buyer understands that NMPSF will retain this Agreement whether or not it is approved. Buyer hereby authorizes and consents to any contact with or inquiry of any person or entity of any kind regarding the credit history or other financial information of or references of Buyer, including bank and trade references and information furnished by credit reporting agencies, and to release information to other creditors or credit reporting agencies regarding NMPSF's credit experience with Buyer.</p>			
AUTHORIZED SIGNATURE		TITLE	
PRINTED NAME		DATE	



ACCOUNT APPLICATION AND CREDIT AGREEMENT

SECTION 4 – TERMS AND CONDITIONS

In consideration of the extension of commercial credit by NMPSF to Buyer and by signing this Agreement, Buyer agrees to the following terms and conditions:

- 1. NMPSF shall have no obligations under this Agreement until Buyer’s application is approved by NMPSF in its sole discretion. Upon approval of Buyer’s application, NMPSF, in its sole discretion, and notwithstanding any request of the Buyer, will assign Buyer a maximum credit line and shall have the right to increase, decrease, or terminate Buyer’s credit privileges under this Agreement at any time without prior notice to Buyer, except as otherwise provided by applicable law. Should Buyer’s credit limit hereunder be exceeded, Buyer shall be liable for the full amount due and owing, including all amounts in excess of the credit limit, and further acknowledges that NMPSF shall have no liability arising out of Buyer’s credit limit being exceeded.
2. Buyer warrants and agrees that by executing this Agreement: (a) all purchases made by Buyer are subject to the terms and conditions contained herein; (b) Buyer has read, understands and accepts all of NMPSF’s Terms and Conditions of Sale (the “Terms and Conditions”), a copy of which has been provided to Buyer, which Terms and Conditions are deemed incorporated into and made part of Agreement; and (c) any terms of Buyer’s acceptance, purchase order or other documentation that are inconsistent with or, additional to, this Agreement are hereby rejected and shall be void and of no effect.
3. Buyer agrees to pay (a) each invoice issued by NMPSF to Buyer within the agreed upon terms and (b) interest at the rate of 1.5% per month, or the highest rate permitted by applicable law, whichever is less, on any amount past due and owing by Buyer to NMPSF.
4. It will be considered to be a “Default” under this Agreement if any of the following occur: (a) Buyer fails to make any payment when due, (b) Buyer breaches any provision of this Agreement, (c) Buyer files (voluntarily or involuntarily) for bankruptcy protection, (d) Buyer becomes insolvent or unable to generally pay its debts when due, (e) Buyer, if an individual sole proprietor, is deceased, or (f) NMPSF deems itself insecure.
5. Upon Default, NMPSF may choose to place a credit hold on the account, enforce a cash on delivery restriction to future purchases by Buyer, declare the entire amount charged to the Buyer’s account due and payable immediately without notice to the Buyer and/or take any and all legal remedies available to it by law. Buyer agrees to pay all costs of collection incurred by NMPSF, including reasonable attorneys’ fees and expenses, court costs and collection agency fees, in the event that NMPSF brings any claim against the Buyer or any guarantor of the credit extended to Buyer hereunder arising out of or related to a Default.
6. Buyer agrees that NMPSF is authorized to apply all unspecified payments by Buyer at its discretion and may apply payments to any amounts due at its own discretion and disregard Buyer’s instructions or requests as to payment application, when the account is considered to be in Default. Buyer hereby grants to NMPSF a right to set off against any indebtedness or obligations due to NMPSF from the Buyer, with respect to all of Buyer’s right, title and interest in and to any deposits, monies, securities and other property of Buyer now or hereafter in the possession of or on deposit with NMPSF or against any indebtedness or obligation of NMPSF to Buyer.
7. Buyer further agrees that credit on merchandise will not be allowed unless Buyer notifies NMPSF in writing within 24 hours of receipt of said merchandise.
8. Buyer agrees and understands that NMPSF, at its sole and absolute discretion, may change the terms and conditions of this Agreement and any extension of credit to Buyer, including to cancel this Agreement at any time without notice and to declare all amounts owed hereunder immediately due and payable.
9. Buyer shall promptly notify NMPSF in writing of any material change in the information provided herein, including, but not limited to, a direct or indirect change of ownership or control, address or telephone.
10. No amendment or modification hereof shall be binding upon NMPSF unless such modification is in writing signed by a duly authorized representative of NMPSF. No term or provision of this Agreement will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided that Buyer may not assign or otherwise transfer this Agreement or any interest or right herein without NMPSF’s prior written consent. If any provision of this Agreement is held to be invalid, illegal, void or for any reason unenforceable by a court of competent jurisdiction, then the provision shall be deemed severable and shall not affect the validity and enforceability of the remaining provisions of this Agreement, and such court shall replace such invalid or unenforceable provision with a valid provision, which shall, to the maximum possible extent, correspond to the legal and economic contents of the invalid or unenforceable provision. This Agreement and all transactions between the Buyer and NMPSF shall be governed by and interpreted in accordance with the laws of the State of Maine, without regard to any contrary principles of choice of law or conflicts of law. The Buyer hereby consents to jurisdiction in the State of Maine and agrees that the state and federal courts within Maine shall have jurisdiction over any claims or causes of action arising out of this Agreement and the rights and duties of the parties hereunder. This Agreement, together with the other documents expressly referred to herein, set forth the entire agreement between NMPSF and Buyer relating to the subject matter hereof, and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing signed by NMPSF and Buyer.

SECTION 5 - PERSONAL GUARANTEE

As consideration for NMPSF extending credit to Buyer, the undersigned person or persons (collectively, the “Guarantor”) jointly and severally, if more than one, hereby unconditionally guarantees to NMPSF the full and prompt payment when due (including any accelerated or extended maturity) of all indebtedness, obligations and liabilities of Buyer to NMPSF, now existing or hereafter created or arising, even if such indebtedness is in excess of the amount applied for by Buyer or the established credit line under the Agreement. Guarantor further agrees to pay any and all costs and expenses of collection including reasonable attorneys’ fees and expenses, court costs, and collection agency fees, in addition to all sums due not otherwise paid by Buyer. Guarantor waives all notices and demands of any kind, and hereby consents to any agreement or arrangement with Buyer, including without limitation agreements and arrangements for payment, extension, subordination, composition, arrangement, discharge or release of the whole or any part of the indebtedness, and the same shall in no way impair Guarantor’s liability hereunder. NMPSF may release or relinquish any security now or hereafter held for any indebtedness hereby guaranteed or any guarantees or sureties, without the same discharging, releasing or in any manner affecting the liability of Guarantor hereunder. This guaranty (“Guaranty”) shall be enforceable before or after proceeding against Buyer or simultaneously therewith, and without resort to any security. The incorporation, merger, reorganization or sale of Buyer’s business shall not operate as termination of this Guaranty, and the Guaranty shall continue as to credit extended to such other entity.

This is an unconditional and continuing guarantee and shall continue so long as credit is extended under the Agreement. Guarantor may revoke this Guaranty only by providing written notice to NMPSF’s credit department via certified mail, return receipt requested, of its intent to revoke the Guaranty, which notice shall be effective upon signed acknowledgement of receipt by NMPSF. Revocation shall not relieve Guarantor of obligations incurred prior to the receipt of such notice. This Guaranty shall be binding upon Guarantor and his/her successors, heirs and assigns. Guarantor hereby authorizes and consents to any contact with or inquiry of any person, individual, or entity of any kind, regarding Guarantor’s credit history or other financial information, including bank and trade references and any consumer credit reporting agencies.

Table with 4 columns: SIGNATURE OF INDIVIDUAL GUARANTOR, SOCIAL SECURITY NUMBER, TITLE, DATE

**ACCOUNT APPLICATION AND CREDIT AGREEMENT****TERMS AND CONDITIONS OF SALE**

All invoices, quotations and order confirmations, and all forms for placing orders for products and/or services, including but not limited to purchase orders, requests for proposal and requests for quotation, are expressly subject to and conditioned on these terms and conditions ("**Terms and Conditions**"). Native Maine Operations, Inc. d/b/a Native Maine Produce & Specialty Foods is hereafter referred to as "**NMPSF**." NMPSF's products and/or services are hereafter referred to as "**Goods**." The purchaser of the Goods from NMPSF is hereafter referred to as "**Buyer**." Buyer's orders for Goods, including but not limited to all of Buyer's quotations, purchase orders, order confirmations, order acknowledgments, invoices or any other form (in any media) for placing orders for Goods, are hereafter referred to as an "**Order**." Any invoice issued by NMPSF relating to the Goods is hereafter referred to as an "**Invoice**."

1. Offer and Acceptance.

Buyer's assent to these Terms and Conditions shall be conclusively presumed from the first to occur of the following: (i) Buyer's execution of a credit account application with NMPSF; (ii) Buyer's execution of any other document containing these Terms and Conditions; or (iii) Buyer's acceptance of delivery of any Goods. Any provision of Buyer's Order (or other documents and communications, written or oral) which is in any way inconsistent with or in addition to these Terms and Conditions shall not be binding on NMPSF and is hereby rejected, notwithstanding any prior transactions or course of dealing between NMPSF and Buyer. No Order of any kind between Buyer and NMPSF shall be binding on NMPSF unless it is accepted by NMPSF. Acceptance by NMPSF of Buyer's Order shall take place upon acknowledgement either electronically or in writing of Buyer's Order, or by delivery to Buyer of all or any part of the Goods.

2. Prices and Payment Terms.

All payments for Goods shall be in U.S. dollars unless otherwise set forth in a credit agreement between NMPSF and Buyer, all Invoices shall be due and payable in full, without set-off or reduction, at the time of delivery of the Goods. Buyer shall pay an interest charge of one and one-half percent (1.5%) per month, or the highest rate permitted by applicable law, whichever is less, on any amount past due and owing by Buyer to NMPSF until paid in full to NMPSF. Buyer shall be responsible for payment of all federal state, local and foreign value-added, excise, sales, use, property and similar taxes, export and import licenses, custom fees and duties, and all other mandatory payments to government agencies of whatever kind, levied in respect to the Goods sold to Buyer by NMPSF, except for taxes levied on NMPSF's net income. If NMPSF is required to pay additional taxes, fees or other charges, Buyer will reimburse NMPSF for such amount(s) on demand.

3. Shipment.

Buyer shall assume all risk of loss or damage with respect to the Goods upon delivery by NMPSF to Buyer. Scheduled dates of delivery are determined from the date of NMPSF's acceptance of any Order(s) placed by Buyer and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery, and NMPSF will not be subject to liability for failure to ship on or before such date under any circumstances. NMPSF reserves the right to make partial shipments of Goods, and Invoices will be issued accordingly. Buyer may not reject a delivery by reason of partial shipment.

4. Inspection; Acceptance; Return of Goods.

Buyer shall have [twenty four hours] 24 hours from the date of delivery of the Goods to inspect the Goods (the "**Inspection Period**") to determine whether the Goods: (a) conform to the Order or (b) are damaged, visibly defective or otherwise nonconforming. Buyer must assert any claim for the foregoing within the Inspection Period by furnishing NMPSF with detailed written information of such damage, nonconformance or defect. In the event inspection and notice of rejection are not made within the Inspection Period, Buyer shall be deemed to have accepted the Goods. No returns can be made without the prior written authorization of NMPSF. All returns are subject to inspection and acceptance by NMPSF. All returns shall be in accordance with NMPSF's specific shipping instructions. When returns are accepted, they are subject to a handling and re-inspecting charge to be determined by NMPSF.

5. Rescheduling/Cancellation.

Buyer may neither reschedule a shipping date nor cancel an accepted Order unless agreed by a duly authorized representative of NMPSF in writing.

6. Warranty.

NMPSF warrants that the Goods shall conform to the description stated on the Invoice. THE FOREGOING WARRANTY IS NMPSF'S SOLE WARRANTY WITH RESPECT TO THE GOODS. ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES ARISING OUT OF TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE, ARE HEREBY DISCLAIMED. NO SALES PERSONNEL, EMPLOYEES, AGENTS OR REPRESENTATIVES OF NMPSF OR ANY THIRD PARTY ARE AUTHORIZED TO MAKE ANY REPRESENTATION, WARRANTY OR COVENANT, WHETHER IN WRITING OR ORALLY, ON BEHALF OF NMPSF, OTHER THAN THE LIMITED WARRANTY ABOVE.

7. Limitation of Liability; Limitation on Action.

NMPSF's sole liability to Buyer and Buyer's sole and exclusive remedy hereunder or under any Invoice or Order for any claim whether in contract, tort, negligence or otherwise shall be limited, in NMPSF's discretion, to (a) replacement (not including labor) of the specific Goods and delivery to Buyer free of charge to the same location of original shipment; or (b) a refund or credit to Buyer of the purchase price for the specific Goods (without interest). BUYER WAIVES ANY RIGHT TO ANY REMEDIES FOR NONCONFORMING GOODS OTHERWISE AVAILABLE AT LAW OR IN EQUITY OTHER THAN THOSE EXPRESSLY STATED IN THIS SECTION 0. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL

NMPSF BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOSS OF REVENUES OR PROFITS, INJURY TO REPUTATION, OR LOSS OF CUSTOMERS, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE OR OTHERWISE EVEN IF NMPSF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE TERMS OF THIS SECTION, OR ANY PART THEREOF, SHALL BE HELD INVALID OR UNENFORCEABLE BY A COURT OF COMPETENT JURISDICTION, NMPSF'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH ANY ORDER, INVOICE OR THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS GIVING RISE TO THE CLAIM. Any action or suit against NMPSF, whether based in tort, contract or any other legal theory, arising in any way from or with respect to these Terms and Conditions, any Order or the Goods must be commenced not later than one (1) year after the cause of action has accrued, but in no event more than one (1) year from the date of the Order.

8. Indemnification.

Buyer shall defend (with counsel to be selected by NMPSF and paid for by Buyer), indemnify and hold harmless NMPSF, its parent, subsidiary and affiliated companies, and the officers, directors, managers, employees and agents of each, from all claims, losses, demands, liabilities, actions, damages, settlements, costs and expenses (including without limitation penalties, interest and attorneys' fees) in any way arising out of or related to any actual or alleged: (a) breach by Buyer of any provisions of these Terms and Conditions; (b) modification, alteration, adaptation or use of the Goods; and (c) acts, representations or omissions of Buyer related to Buyer's sale of the Goods, use of the Goods or incorporation of the Goods into a product or part thereof. NMPSF shall have the right to control the defense of any such claims, including, without limitation, the authority to settle any claim.

9. Governing Law.

These Terms and Conditions and the rights and duties of the parties hereunder shall be governed by the laws of the State of Maine without regard to any contrary principles of choice of law or conflicts of law, and shall be binding upon the parties hereto and their respective successors and permitted assigns. The Buyer hereby consents to jurisdiction in the State of Maine and agrees that the state and federal courts within Maine shall have jurisdiction over any claims or causes of action arising out of these Terms and Conditions and the rights and duties of the parties hereunder.

10. Force Majeure.

NMPSF shall not be liable for any failure to perform in accordance with any Order, including any failure or delay in shipping the Goods, if such failure or delay is due to any war, embargo, riot, terrorism, theft, fire, flood, accident, weather, mill condition, strike or other labor difficulty, an act of Buyer, an act of God, an act of a governmental authority, transportation shortage or failure, inability to obtain sufficient fuel, labor, materials or manufacturing facilities, or any other cause beyond the reasonable control of NMPSF.

11. Intellectual Property.

Buyer acknowledges NMPSF's exclusive ownership of all of NMPSF's trademarks, patents, trade dress, trade names, copyrights, trade secrets and all other intellectual property rights, including those in connection with the packaging, display and distribution of the Goods, and Buyer waives, relinquishes and surrenders any claims to such intellectual property rights.

12. General.

No amendment or modification hereof shall be binding upon NMPSF unless such modification is in writing signed by a duly authorized representative of NMPSF. These Terms and Conditions, together with the other documents expressly referred to herein, set forth the entire agreement under which NMPSF is supplying the Goods for sale to Buyer, and any promises, representations, warranties or guarantees not herein contained shall have no force and effect unless in writing signed by NMPSF and Buyer. Buyer may not assign or otherwise transfer these Terms and Conditions, any Invoice or Order or any interest or right herein or therein without NMPSF's prior written consent. Any assignment without such consent shall be null and void. No term or provision of these Terms and Conditions will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. If any provision of these Terms and Conditions is held to be invalid, illegal, void or for any reason unenforceable by a court of competent jurisdiction, then the provision shall be deemed severable and shall not affect the validity and enforceability of the remaining provisions of these Terms and Conditions, and such court shall replace such invalid or unenforceable provision with a valid provision, which shall, to the utmost possible extent, correspond to the legal and economic contents of the invalid or unenforceable provision.