

## **COMMODITY GUARANTEE**

1. In consideration of the purchase, from time to time, of articles of food or other commodities from the undersigned (hereinafter called "Seller") by **Alpine Food Distributing, Inc.** (hereinafter called "Buyer"), the Seller:

(a) Does hereby guarantee that, as of the time of delivery, the articles of food[, drugs]<sup>1</sup> or other commodities comprising each delivery hereafter made by Seller to, or on the order of, Buyer, shall, at such time, (1) not be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended (the "FD&C Act"); (2) not be articles which are prohibited, under the provisions of Section 404 (21 USC §344) or 505 (21 USC §355) of the FD&C, from being introduced into interstate commerce; (3) not be adulterated or misbranded within the meaning of the pure food or drug laws or ordinances of any state or city which are applicable to such articles; and (4) not be in violation of the provisions of the California Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Sections 25249.5 et seq., commonly known as Proposition 65 and, hereinafter, the "California Safety Code Sections"), and the regulations established thereunder.

(b) Does hereby agree to indemnify and hold the Buyer harmless from and against any and all charges, actions and proceedings brought by any lawful governmental authority against the articles sold or delivered to Buyer and/or Buyer for or on account of any alleged adulteration or misbranding of such articles or any alleged violation of the California Safety Code Sections or the regulations established thereunder, all as referred to in paragraph 1(a) hereof for which Seller is providing guarantees hereunder, including any loss and reasonable expenses, if any, incurred by Buyer as a result thereof;

(c) Does hereby agree to indemnify and hold the Buyer harmless from and against any and all claims, demands, actions and causes of action which are hereafter made or brought against the Buyer by any person for the recovery of damages for the injury, illness and/or death of any person or animal which is caused or alleged to have been caused by the handling, consumption or use by such person or animal of any articles of food or other commodities that were sold or delivered by Seller to Buyer, including, but without limitation, any judgment rendered against Buyer in any such action and the reasonable attorney's fees and costs, if any, incurred by or on behalf of Buyer in connection therewith.

(d) Does hereby guarantee that the products sold or delivered by Seller to Buyer have been processed, produced, and packaged in accordance with applicable Sanitation Standard Operating Procedures (SSOP, under [9 CFR 416.11-416.16](#)) and Hazard Analysis Critical Control Points plan requirements (HACCP, under [9 CFR 417](#)).

2. This guaranty is executed by Seller upon and subject to the following conditions:

(a) With respect to paragraph 1 above, Seller does not guarantee against any articles becoming adulterated or misbranded or otherwise failing to comply with the California Safety Code Sections (and regulations) after the time of delivery to Buyer, and where the adulteration, misbranding or other failure to comply is not caused by any act or failure to act on the part of Seller; provided, that any such adulteration, misbranding or failure to comply which is found to exist after delivery, and which is caused by any defect in the processing or packing of such articles by the processor or packer thereof, by the defective condition of any raw materials used in the processing or packing of such articles or by any defect in the container in which the articles are packed, shall be regarded as having existed at the time of delivery for the purposes of paragraph 1 above; and provided, further, that in those cases in which an article is shipped under Buyer's brand label, Seller's responsibility or liability for misbranding shall be limited only to that resulting from the failure of the article to conform to the written purchase specifications or label furnished in advance by Buyer to Seller, but Seller shall not be responsible or liable for such misbranding if Buyer insists upon the use of Buyer's brand label after Seller has notified Buyer, in writing, of the defects of the label giving rise to any such liability;

(b) With respect to paragraph 1, the indemnity provisions therein contained shall be operative only if Seller receives reasonable notice from Buyer of the seizure of subject articles or the service upon Buyer of process in respect of any proceeding or action, as the case may be;

(c) With respect to paragraph 1, the indemnity provisions therein contained shall not be applicable to any loss or liability in connection with any claim, demand, action or cause of action which relates to the injury, illness and/or death of any person or animal if and to the extent it is established that such injury, illness and/or death was caused by the negligence or intentional misconduct of Buyer and/or such person and/or from a cause or causes beyond Seller's control.

3. Any guaranty that may have heretofore been given by Seller to Buyer which relates to the subject matter hereof is hereby revoked and this guaranty shall not be deemed to be modified or otherwise affected by any agreement hereafter entered into by Seller and Buyer unless specific reference to this guaranty is therein made. This guaranty shall continue in effect with respect to all articles of food and other commodities purchased or ordered by Buyer from Seller prior to the receipt of

written notice of its revocation by Buyer at the address set forth below, or such other address as may be designated in writing by Buyer to Seller. Notice of the acceptance of this guaranty is hereby waived by Seller.

4. This guaranty shall be governed by, and construed and interpreted under, the laws of California.

Dated: April 5, 2021

Address of Seller:

FOSTER POULTRY FARMS  
PO BOX 457  
Livingston, CA 95334

By: \_\_\_\_\_

Tom Bower  
SR VP of Supply Chain

SELLER

Address of Buyer:

ALPINE FOOD DISTRIBUTING, INC.  
2400 SE Mailwell Drive,  
Milwaukie, OR 97222

Attn:Ken Riley



(209) 394-7901  
1000 Davis Street  
P.O. Box 457  
Livingston, CA 95334

April 5, 2021

Attn: Ken Riley  
Alpine Food Distributing  
2400 SE Mailwell Drive  
Milwaukie, OR 97222

RE: Product Guaranty

Dear Mr. Riley;

Please find enclosed Foster Poultry Farms Commodity Guaranty, which includes assurances regarding California's Health and Safety Code, Section 25249.6 of Proposition 65.

It is our understanding that Foster Farms has sent you a Certificate of Insurance separately.

Very truly yours,

*Becky Cornfoot*

Becky Cornfoot  
Executive Administrator

Enclosure

cc: Dustin Feeney, Treasury Manager