

# Whole Foods Market Supplier Portal Terms & Conditions

These Terms & Conditions apply to the Whole Foods Market Supplier Portal (hereinafter "Site"). "Whole Foods" refers to Whole Foods Market Services, Inc. ("WFMSI") and its Affiliates. "You" or "your" means an authorized representative of your company.

IN CONSIDERATION FOR WFMSI GRANTING YOU A LICENSE TO ACCESS AND USE THE SITE, YOU AGREE TO BE BOUND BY THESE TERMS & CONDITIONS IN THEIR ENTIRETY. If you do not agree to all of the Terms & Conditions, do not access or use the Site. If at any point you no longer agree to all of the Terms & Conditions, do not further access or use the Site and delete all copies of the data from the Site in your possession or control.

## **Your Use of the WFMSI Supplier Portal is Governed by the Following Terms & Conditions:**

### **1. License and Access Restrictions.**

WFMSI grants you a limited license to access and make use of the Site and the Content as a WFMSI SUPPLIER ONLY and only to the extent such use does not violate these Terms & Conditions. You may download, print and copy content for your use as a Supplier only, provided you do not modify or alter the content in any way, delete or change any copyright or trademark notice or violate these Terms & Conditions in any way. Accessing, downloading, printing, posting, storing or otherwise using the Site or any of the content for any purpose other than as a Supplier for WFMSI, whether on behalf of yourself or on behalf of a third party, constitutes a material breach of these Terms & Conditions. **Furthermore, the rights granted to you for the Site are personal to you and may not be shared with any other person or entity, regardless of their affiliation with you. Sharing of your login information or other credentials is expressly prohibited. Violations of these restrictions are grounds for the immediate termination of your license to use the Site.**

### **2. Proprietary Rights.**

All right, title and interest in the Site, including all copyrights, patents, trade secrets, trade dress and other proprietary rights belong solely to WFMSI or its licensors. Nothing in these Terms & Conditions or otherwise will be deemed to grant to you an ownership interest in the Site, in whole or in part.

### **3. Trademarks**

WHOLE FOODS MARKET and other related marks, design marks, product names, feature names and related logos used on the Site may not be used, copied or imitated, in whole or in part, without the express prior written permission of WFMSI. In addition, the look and feel of the Site constitutes the service mark, trademark and/or trade dress of WFMSI and may not be copied imitated or used, in whole or in part, without the express prior written permission of WFMSI. WFMSI's trademarks and trade dress may not be used in connection with any product or service in any manner that is likely to cause confusion among customers, or in any manner that disparages WFMSI or suggests a sponsorship, affiliation or endorsement by WFMSI.

### **4. Unlawful or Prohibited Uses.**

The Site may only be used for lawful purposes in accordance with the terms of the license granted to you in these Terms & Conditions. As a condition of your use of this Site, you warrant to WFMSI that you will not use the Site for any purpose that is unlawful or prohibited by these Terms & Conditions. Whether on behalf of yourself or on behalf of any third party, unless you have the express prior written consent of WFMSI, YOU MAY NOT:

- (a) Use or access the Site for any reason other than as a Supplier of WFMSI;
- (b) Download, copy or transmit any content for the benefit of any third-party;
- (c) Use or attempt to use any engine, software, tool, agent, data, or other device or mechanism (including browsers, spiders, robots, avatars or intelligent agents) to navigate or search the Site;
- (d) Frame, mirror or use framing techniques on any party of the Site;
- (e) Make any use of data extraction, scraping, mining or other data gathering tools or create a database by systematically downloading or storing WFMSI Site content or otherwise scrape, collect, store or use any content, product listings, descriptions, prices or images except pursuant to the limited license granted by these Terms & Conditions;
- (f) Use any meta tags or any other hidden text utilizing WFMSI's name or trademarks;
- (g) Misrepresent the identity of a user, impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with any person or entity in connection with the Site, or express or imply that we endorse a statement that you make;
- (h) Conduct fraudulent activities on the Site;
- (i) Violate or attempt to violate the security of the Site including, without limitation: (i) accessing data not intended for you or logging onto a server or an account that you are not authorized to access; (ii) trying to change the functionality of the Site; (iii) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures; (iv) attempting to interfere with service to any user, host or network, including without limitation via means of submitting malware to the Site, overloading, "flooding," "spamming," "mailbombing," or "crashing"; (v) forging any header or any part of the header information in any email or posting; or (vi) forging communications on behalf of the Site (impersonating the Site) or to the Site (impersonating another user);
- (j) Send unsolicited or unauthorized email on behalf of WFMSI;
- (k) Tamper with the Site or use or attempt to use any device, software, routine or data that interferes or attempts to interfere with the working or functionality of the Site or any activating being conducted on the Site;
- (l) Use the Site to defame, abuse, harass, stalk, threaten or otherwise violate the legal rights of others, including others' privacy rights or rights of publicity;
- (m) Harvest or collect personally identifiable information about other users of the Site;
- (n) Restrict or inhibit any other person from using the Site (including, without limitation, by hacking or defacing any portion of the Site);
- (o) Use the Site to advertise any goods or services;
- (p) Reproduce, duplicate, copy, sell, resell or otherwise exploit for any commercial purposes any portion of, use of, or access to the Site;
- (q) Modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Site; or

- (r) Remove any copyright, trademark, or other proprietary rights notice from the Site or materials originating from the Site.

## **5. Confidential Information.**

“Confidential Information” means any information not in the public domain contained on or accessed via the Site and includes, but is not limited to any terms of a business and commercial nature, such as financial information, price lists, marketing data, sales data and economic data, business plans, product specifications or requirements, customer lists, and vendor or supplier lists. Confidential Information does not include information that (1) at the time of your access to the Site, is known to the trade or the public through no fault of you; (2) becomes at a later date known to the trade or the public through no fault of you and then only after such later date; or (3) is disclosed to you in good faith by a third party who has an independent lawful right to such information with no similar obligation not to disclose.

You hereby covenant and agree that you will not (either directly or indirectly) reveal or disclose Confidential Information or allow access to the Site to any other person, partnership, association, or corporation or the like. You will treat all Confidential Information received, accessed or viewed from the Site as confidential and proprietary in nature and will safeguard the secrecy of the Confidential Information by following the same procedures used in safeguarding your own valuable confidential information, but in no event with less than a reasonable standard of care. Notwithstanding the above, you may disclose Confidential Information to your employees or agents; provided however that you will ensure that any recipient of Confidential Information agrees to maintain confidence to the same extent required of you.

You understand and agree that WFMSI is entitled, in the event of any breach or threatened breach of this Agreement, to a restraining order and/or injunction from any competent court of equity to enjoin and restrain you and your employees or agents from any disclosure of Confidential Information of WFMSI. Such equitable remedies shall be in addition to and not in lieu of any other remedy WFMSI may be entitled by law. WFMSI may terminate this Agreement and your access to the Site upon reasonable suspicion or actual notice of your violation of any of these this Agreement and will not be liable for any claims or actions arising out of such termination.

You agree that you will promptly notify WFMSI upon discovery of any unauthorized use or disclosure of the Confidential Information on the Site and take reasonable steps to regain possession of the Confidential Information and present further unauthorized actions or other breach of this Agreement. IN the event that you are requested or required by law or by any court or governmental agency or authority to disclose any of the Confidential Information, you must provide WFMSI with reasonable notice of such request or requirement prior to such disclosure. WFMSI (or the owner of the Confidential Information, either for the purposes of this Section, WFMSI) may then either seek appropriate protective relief from all or part of such request or requirement or waive compliance with the provisions of this Agreement with respect to all or part of such request or requirement. You will cooperate with WFMSI in attempting to obtain, at the expense of WFMSI, any protective relief that WFMSI chooses to seek. If, after WFMSI has had a reasonable opportunity to seek such relief, it fails to obtain such relief, and, in the opinion of counsel for you, you are legally compelled to disclose any of the Confidential Information to such court, agency, or authority, then you may disclose that portion of the Confidential Information that your counsel advises that you are compelled to disclose.

Immediately upon request by WFMSI, you will either destroy or return to WFMSI all Confidential Information (including all electronic or hard copies) in your possession and you will certify in writing to WFMSI that such return or destruction has occurred in accordance with WFMSI's instructions.

## **6. Modification and Termination.**

WFMSI may at any time modify or discontinue any part of the Site. WFMSI reserves the right to make changes to these Terms & Conditions at any time, and such changes will be effective immediately upon being posted on the Site. Each time you use the Site, you should review the current Terms & Conditions. You can determine when these Terms & Conditions were last revised by referring to the "LAST UPDATED" legend at the bottom of these Terms & Conditions. Your continued use of the Site will indicate your acceptance of the current Terms & Conditions; however, any material change to these Terms & Conditions after your last usage of the Site will not be applied retroactively. Except for such material changes, the Terms & Conditions that were in effect at the time any claim or dispute arose between you and us will be applied.

WFMSI reserves the right, without notice and in its sole discretion, to terminate your account or your use of the Site and to block or prevent future access to and use of the Site (i) if you violate any of these Terms & Conditions, (ii) for any other reason, or (iii) for no reason. Upon any such termination, your right to use the Site will immediately cease.

You agree that WFMSI shall not be liable to you or any third party for any termination of your access to the Site. Upon termination, all provisions of these Terms & Conditions which are by their nature intended to survive termination, all representations and warranties, all limitations of liability, and all indemnities shall survive such termination.

#### **7. Support.**

WFMSI is NOT obligated to provide any support or new versions of the Site. If you wish, you may contact WFMSI and report problems and provide suggestions regarding the Site. WFMSI has no obligation whatsoever to respond in any way to such a problem report or suggestion. WFMSI may make changes to the Site any time, without any obligation to notify you.

#### **8. Disclaimer of Warranties.**

WFMSI cannot and does not represent or warrant that the Site or its server will be error-free, uninterrupted, free from unauthorized access (including third party hackers or denial of service attacks), or otherwise meet your requirements. THE SITE AND ALL INFORMATION, CONTENT, MATERIALS , PRODUCTS, SERVICES, AND USER CONTENT INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED BY WFMSI ON AN "AS IS," "AS AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. WFMSI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE, THE ACCURACY OR COMPLETENESS OF THE SITE CONTENTS, OR THAT EMAILS SENT FROM WFMSI ARE FREE OF MALWARE OR OTHER HARMFUL COMPONENTS. YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. TO THE FULL EXTENT PERMITTED BY LAW, WFMSI DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SITE AND ITS CONTENTS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR USE.

#### **9. Limitation of Liability.**

UNDER NO CIRCUMSTANCES SHALL WFMSI OR ITS EMPLOYEES, DIRECTORS, OFFICERS, OR AGENTS BE LIABLE FOR ANY DIRECT OR INDIRECT LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR INABILITY TO USE THE SITE. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND (WHETHER GENERAL, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, INCOME OR PROFITS), WHETHER IN CONTRACT OR TORT, EVEN IF WFMSI HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EACH PROVISION OF THESE TERMS & CONDITIONS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES,

OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN YOU AND WFMSI. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN YOU AND WFMSI. THE LIMITATIONS IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE(S). IF YOU ARE DISSATISFIED WITH THE SITE, ANY CONTENT ON THE SITE, OR THESE TERMS & CONDITIONS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE. YOU ACKNOWLEDGE, BY YOUR USE OF THE SITE, THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF LIABILITY SET FORTH ABOVE, SO THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU, AND YOU MAY HAVE RIGHTS ADDITIONAL TO THOSE CONTAINED HEREIN.

**10. Jurisdiction.**

The Site is controlled and operated by WFMSI from the United States, and is not intended to subject WFMSI to the laws or jurisdiction of any state, country or territory other than that of the United States. WFMSI does not represent or warrant that the Site or any part thereof is appropriate or available for use in any particular jurisdiction other than the United States. In choosing to access the Site, you do so on your own initiative and at your own risk, and you are responsible for complying with all local laws, rules and regulations. We may limit the Site's availability, in whole or in part, to any person, geographic area or jurisdiction we choose, at any time and in our sole discretion.

**11. Indemnification and Defense.**

As a condition of the use of the Site, you agree to defend, indemnify, and hold harmless WFMSI and its respective employees, directors, officers, agents, vendors, and suppliers from and against any liabilities, losses, investigations, inquiries, claims, suits, damages, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses) (each, a "Claim") arising out of or otherwise relating to your use of the Site, including without limitation any User Content submitted by you and Claims alleging facts that if true would constitute a breach by you of these Terms & Conditions.

**12. Applicable Law; Disputes**

YOU AGREE THAT ALL MATTERS RELATING TO YOUR ACCESS TO OR USE OF THE SITE AND ALL MATTERS ARISING OUT OF OR RELATED TO THESE TERMS & CONDITIONS, INCLUDING ALL DISPUTES, WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA, WITHOUT REGARD TO TEXAS' CHOICE OF LAW PRINCIPLES. YOU FURTHERMORE AGREE THAT THE FORUM AND VENUE FOR ANY LEGAL ACTION ARISING OUT OF OR RELATED TO THESE TERMS & CONDITIONS SHALL BE THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AND YOU SUBMIT TO THE PERSONAL JURISDICTION OF THAT COURT. IF SUBJECT MATTER JURISDICTION (INCLUDING DIVERSITY JURISDICTION) DOES NOT EXIST IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, THEN THE EXCLUSIVE FORUM AND VENUE FOR ANY SUCH ACTION SHALL BE THE COURTS OF THE STATE OF TEXAS LOCATED IN TRAVIS COUNTY, AND YOU SUBMIT TO THE PERSONAL JURISDICTION OF THAT COURT. THE MAKING OF CLAIMS OR RESOLUTION OF DISPUTES PURSUANT TO THIS AGREEMENT SHALL BE IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. YOU AGREE THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW: (1) ANY AND ALL DISPUTES, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH THE SITE AND/OR THESE TERMS & CONDITIONS WILL BE RESOLVED INDIVIDUALLY IN THE FORUM DESIGNATED IN THIS SECTION, WITHOUT RESORT TO ANY FORM OF CLASS ACTION; AND (2) ANY AND ALL CLAIMS, JUDGMENTS, AND AWARDS WILL BE LIMITED TO ACTUAL THIRD-PARTY, OUT-OF-POCKET COSTS INCURRED (IF ANY), BUT IN NO EVENT WILL ATTORNEYS' FEES BE AWARDED OR RECOVERABLE.

**13. Miscellaneous**

These Terms & Conditions, including policies and information linked from or incorporated herein,

constitute the entire agreement between you and WFMSI with respect to the Site and supersede all prior or contemporaneous communications, agreements, and proposals with respect to the Site. No provision of these Terms & Conditions shall be waived except pursuant to a writing executed by the party against whom the waiver is sought. No failure to exercise, partial exercise of, or delay in exercising any right or remedy under these Terms & Conditions shall operate as a waiver or estoppel of any right, remedy, or condition. If any provision of these Terms & Conditions is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired. You may not assign, transfer, or sublicense any of your rights or obligations under these Terms & Conditions without our express prior written consent. We will not be responsible for failure to fulfill any obligation due to causes beyond our control.