



Sales Credit Application

Standard Terms Net 30 Days

Company Info ("Customer")

Company Name				
DBA				
Address				
City		State		Zip Code
Phone			Yrs./Location	
Landlord			Phone	
Est. Annual Sales		EIN		DUNS
<input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship				

Owners, Principals, and Officers

Name		Title		
Address		City, State	Zip Code	
Phone		SS#		
Name		Title		
Address		City, State	Zip Code	
Phone		SS#		
Name		Title		
Address		City, State	Zip Code	
Phone		SS#		

Trade References

Name		Phone		
Address		City, State	Zip Code	
Contact				
Email		Fax		
Name		Phone		
Address		City, State	Zip Code	
Contact				
Email		Fax		

Trade References (cont.)

Name		Phone			
Address		City, State		Zip Code	
Contact					
Email		Fax			

Customer References

Name		Phone			
Address		City, State		Zip Code	
Contact					
Email		Fax			
Name		Phone			
Address		City, State		Zip Code	
Contact					
Email		Fax			
Name		Phone			
Address		City, State		Zip Code	
Contact					
Email		Fax			

Bank Reference

Bank Name					
Bank Contact		Email			
Address					
City		State		Zip Code	
Phone		Fax			
<input type="checkbox"/> Checkings		<input type="checkbox"/> Savings		<input type="checkbox"/> Loan	
Account Number(s)					

In connection with this Sales Credit Application (“Application”) of Customer, the Gallo entity providing the goods contemplated hereby ("Gallo") and Customer (and, if applicable, any Personal Guarantor(s) identified below) agree as follows:

1. **Credit Check.** Customer authorizes and releases all banks, persons and companies listed on the Application to furnish any and all financial records and information regarding Customer to Gallo and authorize the checking of Customer’s credit by Gallo. By signing below, the signatory represents that he or she is authorized to sign on behalf of Customer to release such information to and authorize a credit check by Gallo.
2. **Payment Terms.** Payment is due upon receipt of any invoice from Gallo, except that upon approved credit, payment by Customer to Gallo will be due no later than 30 days after the date of any invoice from Gallo. The balance of any late payments is subject to a late charge of 1.5% per month. In the event Customer fails to timely pickup its goods from Gallo, Customer shall pay Gallo a reasonable, daily charge for storing such goods. In the event Customer cancels an order, in addition to any other remedies available to Gallo, Customer shall pay Gallo a cancellation fee equal to 3.25% of the price of the order and a reasonable restocking fee. In addition to the foregoing, regardless of whether a lawsuit is initiated, in the event Gallo incurs collection costs, court costs or attorneys fees to collect delinquent balances from Customer, Customer (and, if applicable, any Personal Guarantor(s)) agrees to pay Gallo such amounts.
3. **NO WARRANTIES; WAIVER OF WARRANTIES. CUSTOMER ACKNOWLEDGES THAT GALLO HAS NOT MADE, DOES NOT MAKE AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY GOODS OR SERVICES PROVIDED BY OR TO BE PROVIDED BY GALLO TO CUSTOMER, INCLUDING WITHOUT LIMITATION, AS TO THEIR MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR USE, FREEDOM FROM INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. GALLO EXPRESSLY DISCLAIMS ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES AND CUSTOMER ACKNOWLEDGES SUCH DISCLAIMER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GALLO MAKES NO WARRANTIES CONCERNING GOODS SOLD TO CUSTOMER, EXPRESS OR IMPLIED, UNDER THE CALIFORNIA UNIFORM COMMERCIAL CODE.**
4. **LIMITATION OF LIABILITY; LIMITATION OF REMEDIES. CUSTOMER’S SOLE AND ONLY REMEDY AND GALLO’S SOLE AND ONLY LIABILITY WITH RESPECT TO THE SALE, DELIVERY, OR RESALE OF ANY GOODS OR PROVISION OF ANY SERVICES TO CUSTOMER, WHETHER IN CONTRACT OR TORT, UNDER ANY WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE SALES PRICE OF THE GOODS OR SERVICES. GALLO SHALL NOT BE LIABLE FOR SPECIAL, GENERAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES, CONTRIBUTION OR INDEMNIFICATION, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, REPUTATIONAL HARM, COST OF CAPITAL OR CLAIMS OF CUSTOMER’S CUSTOMERS, OR PUNITIVE DAMAGES, ARISING UNDER OR RELATING IN ANY WAY TO ITS SALES OF GOODS OR SERVICES TO CUSTOMER OR ANY ACTIONS TAKEN IN CONNECTION THEREWITH. CUSTOMER’S REMEDY UNDER THIS PARAGRAPH IS EXCLUSIVE AND PRECLUDES ANY AND ALL OTHER REMEDIES THAT CUSTOMER MIGHT OTHERWISE BE ENTITLED TO.**

5. **Hold Harmless.** Customer will defend, indemnify and hold Gallo harmless to the maximum extent allowed by the law against any and all claims made against Gallo by Customer's employees, customers, third-party vendors and independent contractors arising out of such person's presence on Gallo's property or Gallo's performance of this Agreement or any related sales agreement.
6. **Defective Products.** Within 10 days of receipt, Customer may reject and either return to Gallo or hold any Products that do not conform to specifications agreed to by the Parties ("nonconforming products"). At its option, Gallo shall refund, credit to Customer or offset from any amount owed by Customer the cost of processing the nonconforming products; defective product refunds not to exceed Gallo's processing fee. Gallo may also elect to purchase the nonconforming products from Customer and resell those nonconforming products. In no event shall the remedies contained in this paragraph exceed the Limitations of Liability contained in this Agreement.
7. **Shipping and Incoterms.** Unless otherwise agreed, Customer will be responsible for coordinating and paying for transportation of Gallo's goods from Gallo's facility in or around Atwater, CA to Customer's desired destination. In addition, Customer shall be responsible for paying any fees or penalties associated with such transportation. All shipments shall be EXW Gallo's facility in or around Atwater, CA.
8. **Excuse For Non-Delivery Or Delay In Performance.** Gallo shall not be liable in any way for any delay, non-delivery or default in shipment due to labor disputes, transportation shortage, delays in receipt of material, priorities, fires, epidemic, accidents and other causes beyond the control of Gallo or its suppliers.
9. **Insurance.** Each Party shall obtain and maintain, at its sole cost and expense at all times during the term of this Agreement and for a minimum of two (2) years following the termination hereof or such later date as provided below, the following insurance on an "occurrence" basis: (a) Commercial General Liability: covering bodily or personal injury, property damage, products and completed operations of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall include the following coverage: (1) premises/operations; (2) independent contractors; (3) products/completed operations (for a period of not less than five (5) years following completion of Supplier's performance hereunder); (4) contractual liability, including protection for such party from claims arising out of liability in connection with this Agreement; (5) personal injury liability; and (6) explosion, collapse and underground hazards, as applicable; (b) Worker's Compensation: statutory; (c) Employer's Liability: \$500,000 bodily injury by accident – each accident; \$500,000 bodily injury by disease – policy limit; \$500,000 bodily injury by disease – each employee; (d) Automobile Liability (owned, non-owned and hired): combined single limit bodily injury and property damage of \$1,000,000 each occurrence and annual aggregate; and (e) Umbrella Liability (must follow form): \$5,000,000 each occurrence/annual aggregate. Each party hereby waives all express and/or implied rights of subrogation and hereby waives all rights of subrogation held by its liability insurance carrier against the other party and its employees, directors, officers, and affiliates, except to the extent that such waiver of subrogation would otherwise render insurance policies or coverage void. Customer's policies as required above shall be endorsed to name Gallo and its employees, directors, officers, and affiliates as additional insureds (CG2010 or equivalent). All insurance policies hereunder shall be provided by an insurer that has an A.M. Best rating classification of "A-" or better. The minimum insurance requirements contained herein and each party's maintenance of insurance shall in no way limit, impair, or affect the extent of such party's liability under this Agreement.
10. **Choice of Law and Venue.** This Application and the parties' relationship shall be governed by and construed in accordance with California law without giving effect to the principles of conflict of laws that might otherwise apply. The parties acknowledge that this Application (and, if applicable, Personal Guarantee) contemplates performance in and is substantially related to Merced County, California. Gallo and Customer (and, if applicable, Personal Guarantor(s)), irrevocably consent to venue for all disputes arising out of this Application, the Personal Guarantee, sales between the parties or any parties' performance hereunder being solely in Merced County Superior Court.

11. **Attorneys Fees.** If any of the parties commences legal proceedings against the other(s) arising out of or in connection with this Application, the Personal Guarantee, sales between the parties or any parties' performance hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such legal action.
12. **Merger/Integration Clause.** This Application contains the entire agreement between the parties and supersedes and all prior written and/or oral agreements between them. While the parties anticipate agreeing to additional terms in the course of business (e.g., order details such as volume and price), the terms of this Application may be altered or modified only in a writing signed by the parties hereto. Conflicting provisions in purchase orders or other sales documents provided by Customer shall not be given effect unless signed by Gallo.
13. **Force Majeure.** Neither party shall be bound to the terms of this Agreement to such extent and for such period of time where events make compliance with the terms of this Agreement temporarily impossible, including, but not limited to, such events as earthquake, fire, flood, storm, riot, epidemic, war, unforeseen mechanical breakdown, milk shortage or severe drought. Such affected party shall give written notice to the other party of the occurrence of a Force Majeure Event as soon as commercially practicable and the requirements of this Agreement shall be suspended during the period of such disability. However, in no event shall a Force Majeure Event constitute a basis for Company to cease compliance with its payment obligations hereunder.
14. **Assignments.** This Agreement is binding upon the Parties and is not assignable, except with the express consent of the other party first had and received. Notwithstanding the foregoing, in its sole discretion, Gallo may assign this Agreement to any Gallo entity.
15. **Notices.** Except as otherwise provided herein, all notices hereunder (and, if applicable, under the Personal Guarantee) shall be in writing and shall be mailed to:
 Gallo Global Nutrition
 Attn: Peter Gallo
 10561 W. Hwy 140
 Atwater, California 95301

Gallo Global Nutrition

By: _____

Name: Peter Gallo

Title: VP

CUSTOMER

By: _____

Name: _____

Title: _____

PERSONAL GUARANTEE

In order to induce Gallo Global Nutrition LLC ("Gallo") to extend credit to Customer as set forth above and in consideration of such credit, Gallo and any individuals identified as Personal Guarantors in the signature block below ("Personal Guarantors") agree to the terms set forth above and, in addition, agree as follows:

- 1. **Continuing Personal Guarantee.** The Personal Guarantors do hereby unconditionally, irrevocably and personally guarantee performance of Customer’s obligations set forth above and full and prompt payment of all of Customer’s accounts with and indebtedness to Gallo (the “Personal Guarantee”). This Personal Guarantee is a continuing guarantee that applies to all transactions, indebtedness and existing accounts between Customer and Gallo as of the date of this Application and all future transactions, indebtedness and accounts between Customer and Gallo from the date of this Application until the Personal Guarantee is revoked. This Personal Guarantee can only be revoked upon 15 days written notice to Gallo, which such revocation shall not affect prior or then-existing transactions, indebtedness and accounts and will only apply to future accounts, transactions and indebtedness entered into or incurred after the effective date of the revocation.
- 2. **Waiver of Defenses and Rights.** The Personal Guarantor(s) do hereby waive all defenses related to this Personal Guarantee, including but not limited to: (a) diligence and demand of payment; (b) all notices to Personal Guarantor(s) including but not limited to notice of acceptance of this guarantee, notice of extension of credit, notice of default; (c) all demands whatsoever, including but not limited to presentment of demand for payment; (d) all statutes of limitations affecting liability under the Personal Guarantee; and (e) any duty on the part of Gallo to disclose any facts to the Personal Guarantor(s) regarding Customer or anything else. The Personal Guarantor(s) further waive any right to require Gallo to exhaust security or collateral or proceed against Customer before enforcing the Personal Guarantee.

Personal Guarantor (s)

By: _____

Print Name: _____

By: _____

Print Name: _____

By: _____

Print Name: _____