



## CUSTOMER AGREEMENT

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The Common Market is a values-driven distributor of local foods to the Mid-Atlantic, Southeast, Texas, and Great Lakes regions. Our mission is to strengthen the viability of regional farms while making the local bounty accessible to the communities from which they arise and the institutions that serve them. We create transparency in the food system by disseminating the history and location of our farms, and providing point-to-point traceability of our products. We seek arrangements with customers that are fair to our growers, farm workers, end-consumers, and the environment.

This Customer Agreement (the “**Agreement**”) defines the business arrangement

**BETWEEN:** The Common Market (“**The Common Market**”), and its affiliates

**AND:**

\_\_\_\_\_ (“**Customer**”) a \_\_\_\_\_ [CUSTOMER CORPORATE FORM]  
organized and existing under the laws of \_\_\_\_\_ [CUSTOMER STATE] located at  
\_\_\_\_\_  
\_\_\_\_\_  
[CUSTOMER ADDRESS].

The Common Market and Customer may each be individually referred to as a **Party** and together constitute the **Parties**. Effective the date of signature, Customer and The Common Market agree to the following terms:

1. **Vendor Approval.** Customer designates The Common Market as an approved vendor of regional products.
2. **Service Agreement.** The Common Market will sell and deliver the Customer certain products to agreed upon locations, as ordered by Customer. Customer is not obligated to purchase a minimum amount of Products.
3. **Product Specifications.** As used in this Agreement, “Products” means the items listed on The Common Market Availability List. Products change seasonally and with the development and termination of agreements with regional producers. The Common Market will source its Products in accordance with [“The Common Market Sustainable Sourcing Philosophy”](#).
4. **Food Safety.** The Common Market complies with Safe Quality Food (SQF) policies as overseen by the Global Food Safety Initiative. Upon request, The Common Market will provide Customer with the results of its SQF Third-Party Audit.
5. **Payment Terms.** The Common Market will provide an invoice to Customer with each delivery. *Standard* Payment of each invoice is due in accordance with the Local Government Prompt Payment Act.

All customers, with the exception of publicly funded institutions (ex: public school, government agency), must file a [credit application](#) to The Common Market. Customers may choose from the following payment options:

- ACH credit transfer (preferred method) - *You are requesting to transfer money from your account to The Common Market’s account, often referred to as a “push”.*
- ACH debit (preferred method) - *You are giving The Common Market approval to withdraw money from your account, often referred to as a “pull.”*

- Check by mail
- Bill.com
- Payment with Credit Card – *A 3% processing fee will be added as a line item to each invoice*

**Upon check mark above here made, Customer agrees to accept selected payment term procedures.**

6. **Payment Disputes & Penalties.** The Customer agrees to notify The Common Market in writing of any dispute with an invoice or delivery **within 3 business days of receipt of goods.**

Payment of the applicable invoice will be considered past due according to Customer Payment terms:

- If Customer is approved for 45-day terms, payment will be considered past due on the 46<sup>th</sup> day following the date of delivery.

The Common Market will charge, and Customer agrees to pay, interest at a monthly rate of 1.5% on the outstanding balance of any invoice remaining unpaid in accordance with Customer Payment terms: after receipt of goods or on the 46<sup>th</sup> day following the applicable date of delivery. Customer's failure to pay an invoiced charge and any applicable interest within 60 days of the applicable date of delivery shall constitute a breach of this Agreement and shall entitle The Common Market to cease its provision of services hereunder without risk of liability or penalty therefor.

In the event of a returned check, Customer will be responsible for reimbursing The Common Market for the associated \$20 "bounced check" fee (subject to change).

The perishable agricultural commodities listed on each invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agriculture Commodities Act 1930 (7USC 4999e(c)). The Common Market retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sales of these commodities until full payment is made.

This provision shall survive the termination of this Agreement.

7. **Indemnification.** The Common Market shall indemnify and hold Customer, its agents, employees, officers, directors, and affiliates harmless from and against any and all liabilities, losses, costs, damages, injuries, claims, suits, judgments, causes of action and expenses suffered or incurred by Customer as a result of any material defect in any Products sold to the Customer caused by The Common Market's negligence, provided that such defect is shown to have arisen prior to the delivery of the Products to the Customer and further provided that the Customer gives The Common Market prompt notice of any such claims, suits, or causes of action. Notwithstanding the foregoing, in no instance shall The Common Market be responsible for any expenses above the limits of its insurance policies.
8. **Insurance.** The Common Market agrees to maintain, during the term of this Agreement, a comprehensive general liability insurance policy, including liability coverage and contractual liability coverage insuring against the liabilities assumed under this Agreement, in minimum amounts of:
- a. \$5,000,000 per occurrence for damage, injury and/or death to persons, and
  - b. \$6,000,000 general aggregate limit, and
  - c. \$6,000,000 for products and completed operations liability
  - d. \$5,000,000 per occurrence for Automotive liability insurance.

Customer and its employees and agents shall be named as additional insureds. The Common Market agrees to provide Customer with a certificate of insurance upon request.

9. **Identity of Sourcing Locations.** Upon request, The Common Market will provide Customer with information sufficient to trace all Products to their original source.
10. **Restriction on the Customer's Use of The Common Market's Farm and Vendor Sources.** Intentionally Deleted.
11. **Title and Risk of Loss.** Title to all Products included in a purchase order shall pass to Customer upon Customer's acceptance thereof evidenced by a signed delivery receipt. Any items rejected at the point of delivery and noted as rejected upon receipt of goods shall remain the property of The Common Market.
12. **Products Warranties.** The Common Market hereby guarantees that each and every Product delivered to Customer by The Common Market, is as of the date of such delivery:
  - a. Not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act of 1938, as amended, and does not contain any article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into interstate commerce;
  - b. If the Product is meat or poultry, it is not adulterated or misbranded within the meaning of the Federal Meat Inspection Act as amended by the Wholesome Meat Act, or within the meaning of the Poultry Products Inspection Act as amended by the Wholesome Poultry Products Act;
  - c. Not adulterated or misbranded within the meaning of any state or municipal law that is identical with or substantially similar to the Federal Food, Drug and cosmetic Act;
  - d. Not in a misbranded package within the meaning of the Federal Hazardous Substances Act.

Customer agrees to promptly notify The Common Market in writing of any demand, complaint, or proceeding for an alleged violation of any of the aforementioned laws, giving the name and address of the complaining party and specifying the applicable Product.

13. **Product Recalls.** In the event that The Common Market receives information that any of the Products should be recalled for any reason, then The Common Market shall immediately disseminate that information to Customer.
14. **Independent Contractor.** The Parties hereto will be independent contractors under this Agreement. It is not the intent of the Parties to form any legal partnership, agency, or joint venture. Neither party shall have the authority to bind or otherwise obligate the other party in any manner nor shall they represent to anyone that they have the right to do so.
15. **Dispute.** In the event of a dispute involving the interpretation or application of any provision of this Agreement, the Parties agree to attempt to settle any dispute in a spirit of good faith and mutual understanding through internal executive discussions. If the Parties cannot resolve their differences in such fashion within thirty (30) days after first discussion, or shorter period as agreed upon by the Parties in writing, then either Party shall be free to seek any other remedy available to them at law or in equity.
16. **Termination.** Either party may terminate this Agreement for any reason with 60 days' written notice. In the event either party fails or refuses to comply with any of the obligations hereunder, to the detriment of the other party, then the non-defaulting party shall give written notice specifying the default to the defaulting

party, and the defaulting party shall have 30 days to cure the default. In the event such default is not cured within the 30 day period, or cannot be cured, then the non-defaulting party may terminate this Agreement upon 5 days written notice.

17. **Survival.** Any provision of this Agreement which imposes any obligations upon the Parties after termination of this Agreement, shall survive such termination.
18. **Waiver, Modification or Amendment.** This Agreement may not be waived, modified nor amended except with the signed, written consent of both Parties.
19. **Notices.** All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be sent to the Parties signing this Agreement, and any other party designated, at the addresses written above, by either fax or e-mail and, in addition, by either hand delivery or nationally recognized overnight delivery service with package tracking and delivery signature verification (e.g. FedEx, UPS). Any delivery refused pursuant to this provision shall be deemed delivered.
20. **Severability.** If any one or more of the provisions or terms of this Agreement is deemed invalid for any reason, then such provision or terms shall be deemed severed from the remaining provisions or terms of this Agreement and shall in no way affect the validity of the other provisions or terms of this Agreement.
21. **Compliance with Laws.** Both Parties shall comply with all applicable federal, state and local laws and executive orders and regulations issued pursuant thereto, including without limitation, all laws relating to equal employment opportunity.
22. **Prior Agreements and Choice of Law.** This Agreement shall be governed by the laws of the State of Illinois. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision. This Agreement shall supersede all prior oral and written Agreements between the Parties relating to the subject matter hereof.
23. **Entire Agreement.** The Customer Agreement and the Exhibits attached hereto constitute the entire agreement of the Parties with respect to its subject matter and supersede any and all prior negotiations, understandings, and/or Agreements, whether oral or written.

Wherefore, by affixing their signatures below the Parties hereto have caused this Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Contact: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Organization/Business: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Fax: \_\_\_\_\_

The Common Market

Tatiana Garcia-Granados

COO



428 E Erie Ave Philadelphia, PA 19134