

TH FOODS, INC.

Standard Terms and Conditions of Sale

TH Foods, Inc.'s ("Seller") sale of any goods ("Goods") to Buyer ("Buyer") are subject to the following exclusive terms and conditions (these "Terms"), which are hereby incorporated as part of any sale of the Goods to Buyer. Any and all additional, inconsistent or contrary terms set forth in any requests for quotes or proposals, purchase orders, releases or any other documents issued by Buyer are hereby rejected.

- 1. Purchase Orders.** All purchase orders of Buyer must, unless otherwise agreed in writing by Seller, be in writing and set forth the desired quantity of the Goods, the product number or type of Goods, the desired delivery date, the price, and all additional relevant information necessary to effectuate Seller's shipment of the Goods. All purchases and purchase orders are conditioned upon and subject to Buyer's acceptance of these Terms. All orders are subject to acceptance or rejection by Seller at its sole discretion. The purchase price shall be paid in U.S. dollars only, and all payments shall be made only to Seller at its headquarters in Loves Park, Illinois.
- 2. Cancellation/Changes.** Buyer may not amend, cancel or delay delivery of any purchase order or any part of any purchase order except with a signed and written agreement between Buyer and Seller.
- 3. Taxes.** All prices are exclusive of federal, state, local and other excise, sales, use, property, transportation, occupational and other taxes relating to the sale, together with penalties and expenses, all of which shall be paid by Buyer. Buyer shall be responsible for paying any and all such taxes whether or not they are stated in any invoice for Goods shipped. Buyer shall indemnify and hold Seller harmless from and against the imposition and payment of such taxes. Seller, at its option, may at any time separately bill Buyer for any taxes not included in Seller's invoice, and Buyer shall pay said taxes, or in lieu thereof, shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.
- 4. Shipments and Risk of Loss.** All shipment dates are approximate and conditioned on the prompt receipt of all necessary information from Buyer. Unless otherwise agreed in writing by Seller, all shipments shall be FOB (under the Uniform Commercial Code) Seller's factory, Seller's facility or other shipping location. Buyer shall be responsible for all transportation charges. All shipments shall be made in Seller's standard packages. Unless otherwise agreed in writing by Seller, Seller shall use Seller's standard shipping methods and procedures for commercial shipments within the United States. Title and risk of loss to the Goods shall pass to Buyer upon delivery of the Goods to a common carrier at Seller's facility or other shipping location. If there is any loss of or damage to Goods following delivery to the carrier, upon Buyer's request Seller shall cooperate with Buyer in connection with Buyer's claims to the carrier and/or Buyer's insurer.

5. Limited Warranty; Limitation of Liability; Exclusion of Damages.

- a) Seller warrants that Goods that consist of food products and/or additives are sold subject to Seller's Continuing Guaranty (the "Limited Warranty"). If a "best by" date is indicated on the Goods, the foregoing Limited Warranty shall expire on the indicated "best by" date. If a "best by" date is not indicated, the foregoing Limited Warranty shall be limited to a six (6) month period commencing on the date of shipment; in each case provided that Buyer promptly notifies Seller in writing of any warranty claim hereunder within said warranty period. In the event any Good fails to meet the foregoing Limited Warranty within said warranty period, Seller's sole obligation shall be to promptly reimburse Buyer by means of a refund or credit for the purchase price of the Goods in question or replace the Goods, at Seller's sole option. The foregoing remedy shall be Buyer's sole and exclusive remedy for failure of the Goods to comply with the above Limited Warranty.
- b) **SELLER'S LIMITED WARRANTY HEREIN IS THE SOLE AND EXCLUSIVE WARRANTY WITH REGARD TO GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER (AND THE MANUFACTURER OF THE GOODS AND THEIR SUBSIDIARIES AND AFFILIATED COMPANIES, AS APPLICABLE), WHETHER EXPRESS, IMPLIED, OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR PARTICULAR PURPOSE OR USE.**
- c) Seller's Limited Warranty shall not apply to any Goods or portions thereof which have been subjected to abuse, misuse, improper storage, handling, or abnormal conditions, or to Goods which have been tampered with or otherwise altered by anyone not approved in writing by Seller.
- d) **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER, THE MANUFACTURER OF THE GOODS, OR THEIR SUBSIDIARIES AND AFFILIATED COMPANIES, AS APPLICABLE, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DOWN-TIME, LOSS OF PROFITS OR REVENUE, RELATING TO THE GOODS OR THE PURCHASE, SALE OR USE OF GOODS HEREUNDER, WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR OTHERWISE, REGARDLESS OF WHETHER: (A) SUCH DAMAGES WERE FORESEEABLE; (B) SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR (C) THE EXCLUSIVE REMEDIES PROVIDED IN THESE TERMS HAVE FAILED OF THEIR ESSENTIAL PURPOSE.**
- e) No agent, employee or representative of Seller (or any distributor, dealer or sales representative of Seller) has the authority to bind Seller to any additional affirmation, representation or warranty not stated in these Terms. Any such additional

Last updated on: 08/24/2021

affirmation, representation or warranty will not be included as part of these Terms shall in no way be binding upon Seller or enforceable by the Buyer.

- f) **THE TOTAL AGGREGATE LIABILITY OF SELLER, THE MANUFACTURER OF THE GOODS, OR THEIR SUBSIDIARY AND AFFILIATED COMPANIES, AS APPLICABLE, SHALL NOT EXCEED, UNDER ANY CIRCUMSTANCES, THE AMOUNT ACTUALLY PAID TO SELLER WITH RESPECT TO THE GOODS WHICH GIVES RISE TO THE CLAIM, LOSS OR DAMAGE, REGARDLESS OF THE NATURE OF THE DAMAGES OR LOSSES OR THE LEGAL THEORY OR BASIS FOR SELLER'S LIABILITY.**

6. Packaging and Shipping.

- a) All Goods will be prepared and packaged for shipment by Seller in a commercially reasonable manner. Seller may charge Buyer nominal charges for odd lot size boxing, packaging, or handling, which will be included on Seller's invoice as shipping and handling charges.
- b) Seller reserves the right to make partial shipments, but will attempt to minimize such partial shipments as commercially reasonable as possible.
- c) Seller reserves the right to withhold shipments or require prepayment of any orders where, in Seller's opinion, Buyer's payment record or financial conditions provide grounds for insecurity regarding Buyer's ability to pay Seller for Goods. Such action shall not constitute a breach or cancellation of these Terms.

- 7. Invoices and Payments.** Individual invoices will be issued for each shipment under a purchase order. All invoice amounts are due thirty (30) days from the date of the invoice unless otherwise agreed in writing by Buyer and Seller. Purchase orders may be accepted subject to any credit terms requested by Seller, including, but not limited to, cash on delivery or due upon receipt. Seller reserves the right to charge interest at the rate of 1.5% per month or the maximum percentage permitted by applicable law, whichever is less, on all balances not paid by Buyer within the designated net terms. Buyer may not set off or deduct any invoice amounts for any reason, unless agreed in writing by Buyer and Seller. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

- 8. Credits and Returns.** Buyer may return Goods to Seller only after obtaining a return authorization from Seller. Seller may, at its sole discretion, credit Buyer's account for Goods returned in accordance with this section and that are free of all liens and encumbrances of any nature.

- 9. Specifications and Technical Information; Confidentiality.** Information relating to Seller's business and the Goods including, but not limited to specifications, product designs,

Last updated on: 08/24/2021

shapes, concepts, formulas, recipes, ingredients and flavors, requirements, manufacturing/baking processes, techniques, systems, machinery, procedures and technology, marketing information, and other technical information furnished to Buyer by Seller (collectively, "Confidential Information") shall remain confidential and the proprietary property of Seller. Accordingly, all Confidential Information of Seller shall (i) be held in strict confidence by Buyer, and (ii) not be disclosed by Buyer to any third party whatsoever without Seller's prior written consent. Seller has expended substantial time, effort and money in the research and development of various recipes, formulas and processes relative to the production of its Goods and in the process has created valuable trade secrets and intellectual property rights therein (the "IP"). All such IP shall be and remain the sole and exclusive property of Seller and no rights of any nature whatsoever are granted, or shall be deemed to be granted, to Buyer by these Terms, Buyer's purchase of Goods from Seller or otherwise. Copyright in all materials made available by Seller shall remain in Seller at all times. Any disclosure or misappropriation of any IP or other Confidential Information in violation hereof by Buyer would cause Seller irreparable harm, the amount of which may be difficult to ascertain and, therefore, Buyer agrees that Seller shall have the right to apply to a court of competent jurisdiction for an order restraining any such threatened or further disclosure or misappropriation and for such other relief as Seller shall deem appropriate (without the posting of any bond, which Buyer waives), such right of Seller to be in addition to the remedies otherwise available at law or in equity.

10. Limitation of Buyer's Time to Make Claims. ANY CLAIMS FOR SHORTAGES MUST BE MADE BY BUYER WITHIN FIVE (5) DAYS OF BUYER'S RECEIPT OF THE GOODS, OR ELSE SUCH CLAIMS SHALL BE BARRED. BUYER HAS A MAXIMUM OF ONE (1) YEAR FROM THE DATE A CLAIM ACCRUED TO FILE A DEMAND FOR ARBITRATION AGAINST SELLER FOR ANY CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY ACTUAL OR ALLEGED BREACH OF THESE TERMS, OR OTHERWISE RELATING TO THE PURCHASE, SALE OR USE OF GOODS OR THE RELATIONSHIP OF THE PARTIES. IF BUYER HAS NOT FILED A DEMAND FOR ARBITRATION WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION HAS ACCRUED, THE CLAIM SHALL BE FOREVER BARRED.

11. Governing Law, Arbitration. All claims and issues relating to the sale, purchase, or use of Goods, including but not limited to the interpretation, validity, and enforcement of these Terms, shall be governed by the internal laws of the State of Illinois, without reference to its conflicts of laws provisions. Buyer and Seller hereby agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to these Terms, the purchase, sale or use of the Goods, or any other transaction between them. All disputes, controversies or differences arising out of or in relation to these Terms or the sale, purchase, or use of Goods or any other transaction hereunder, which cannot be settled by mutual accord, shall be submitted to the American Arbitration Association for arbitration in Chicago, Illinois, pursuant to such Association's rules for commercial

Last updated on: 08/24/2021

arbitration. The number of arbitrators shall be three (3). The arbitrators shall have no authority to award punitive damages against either party hereto. Judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The foregoing to the contrary notwithstanding, to the extent that Seller may be entitled to equitable relief or to replevy or repossess Goods, Seller may bring an action in any appropriate court to obtain such equitable relief or to replevy or repossess Goods.

12. Force Majeure. Seller will not be liable for delays in production or delivery due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of Buyer, acts of military authorities, fires, strikes, floods, epidemics, civil commotion, acts of terrorism, explosion, accident, acts of governmental or public authorities (including quarantine restrictions), war, delays in transportation, and inability to obtain necessary labor, materials or manufacturing facilities (“Force Majeure Event”). In no event will Seller be liable to Buyer for any damages whatsoever, including loss of income, use or profits, or any collateral, incidental, special or consequential damages resulting from delays or Seller’s inability or failure to deliver Goods due to a Force Majeure Event.

13. Miscellaneous.

- a) Except as set forth on the reverse side of this document or otherwise attached to these Terms and signed by Seller and Buyer, there are no other agreements between Seller and Buyer with respect to the Goods.
- b) If any part of these Terms is held invalid, the remaining terms and conditions hereof shall not be affected thereby.
- c) These Terms may be modified, canceled or rescinded only by a written agreement signed by both parties.
- d) All rights available to Seller under the Uniform Commercial Code as enacted in the State of Illinois (even though not specifically enumerated), are expressly reserved to Seller as remedies available to it in case of Buyer’s breach.
- e) These Terms and any rights or obligations hereunder may not be transferred or assigned by Buyer without the prior written consent of Seller. Any unauthorized transfer or assignment shall be null and void.
- f) Any failure by either party to enforce at any time any term or condition hereof shall not be considered a waiver of such party’s right thereafter to enforce the same or any other term or condition.



Last updated on: 08/24/2021

- g) These Terms shall be binding upon the successors and legal representatives of Buyer and Seller.
- h) These Terms are intended solely for the benefit of the parties hereto and are not intended to confer any third-party beneficiary rights upon any other person or entity.
- i) Seller shall be entitled to recover from Buyer all attorneys' fees, court or arbitration costs and other expenses incurred by Seller in enforcing any obligation of Buyer under these Terms.