

FLAVORCHEM CORPORATION - PURCHASE ORDER TERMS AND CONDITIONS

1. ACCEPTANCE and CONTROLLING TERMS: FLAVORCHEM CORPORATION ("PURCHASER") OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS PROPOSED BY SELLER in Seller's confirmation or acceptance of this order and, if such different or additional terms are included in Seller's acceptance, a contract for sale will result solely upon Purchaser's terms stated herein. Seller agrees that any additional or different terms proposed by Seller are excluded unless expressly accepted by Purchaser in writing. Upon Seller's commencement of performance or tender of the goods, a binding contract will be formed solely on Purchaser's terms and conditions stated herein and the contract will not include Seller's additional or different terms or conditions. The terms and conditions set forth herein shall apply to any order placed by Purchaser and shall also apply to all subsequent orders placed by the Purchaser with the Seller hereafter until changed by written agreement of the parties, In the event of any inconsistency between the terms on the face of any order placed by Purchaser and these terms and conditions, the terms on the face of such order shall take precedence. Purchaser may cancel or modify any order at any time without liability of any kind prior to Purchaser's receipt of Seller's acceptance of that order.

2. PERFORMANCE: All goods called for in an order must be tendered in a single delivery and must not be delivered in installments unless otherwise specified by Purchaser. Timely delivery of goods of the grade, quality, quantity and description specified in the order, is of the essence of this contract. Without limiting the generality of the foregoing, if delivery of goods is not made by the scheduled delivery date provided in the order, or if Seller shall default in strict compliance with the requirements of this order, then Purchaser may cancel any order and obtain the goods elsewhere, or may accept late performance or delivery or nonconforming goods and in any such case, Seller shall be liable to Purchaser for any loss or damage including, without limitation, consequential or incidental damages, cost of obtaining replacement goods, and loss of profit.

3. ALLOCATION: In the event of a partial failure of Seller's sources of supply of goods purchased hereunder, Seller shall first meet all of Purchaser's requirements hereunder prior to any allocation among its customers under any provisions of the Uniform Commercial Code or other applicable law.

4. LIMITATION ON LIABILITY: In no event shall Purchaser be liable to Seller for Special, Indirect, Incidental, consequential, Exemplary, or Punitive Damages of any kind, including, without limitation, lost profits, arising out of or related to any order, whether based in tort, contract or any other theory and regardless of whether Purchaser was informed of the possibility of such damages.

5. ADDITIONAL CHARGES: Purchaser shall have no obligation to pay for any extras or additional charges in connection with any order, unless authorized in writing, signed by a duly authorized officer of Purchaser.

6. FREIGHT; ROUTING: All goods are to be forwarded at Seller's expense unless otherwise specified in the applicable order. Any losses and any increased carrying charges resulting from deviation from Purchaser's routing instructions will be charged to Seller. Shipment and delivery of the goods shall be made by Seller to such party and to such destination as Purchaser may from time to time direct. Any freight or carriage expenses incurred in such shipment to the extent that it exceeds the cost of shipment to Purchaser's plant at the location specified in the applicable order shall be for the account of Purchaser.

7. WARRANTIES: In addition to all warranties which may be provided by law, Seller warrants that all goods or services furnished under any order (i) shall be free from defects in design, material, manufacture and workmanship for a period of one year. (ii) conform strictly to the specifications, drawings, plans, samples or other descriptions furnished, specified, accepted or approved by Purchaser, and (iii) be merchantable and fit for the purposes intended and for use in Purchaser's confectionery and food business. Seller also warrants that it is conveying good title to Purchaser, free from any liens and encumbrances and no person has any rightful claim of infringement or violation of proprietary rights with respect to the goods or services. These warranties, including warranties provided by law, shall benefit Purchaser and its successors, assigns and customers and shall survive acceptance of the goods or services.

8. INDEMNIFICATION:

Seller unconditionally agrees to defend and indemnify Purchaser and its successors, assigns and customers, against, and save them harmless from any and all claims, liability, losses or damages of any character whatsoever and expenses, costs and fees (including reasonable attorney's fees), arising from, or relating to (i) any violation or claimed violation of any law, rule or regulation, or (ii) any infringement or claimed infringement of any patent, trademark, copyright or design right or any other rights, or (iii) any breach or alleged breach by seller of any terms or conditions of an order, or (iv) any injury to persons or

property caused by, relating to, or arising out of the sale or use by anyone of the goods. This indemnity and all other agreements of indemnity shall survive the acceptance of the goods; provided, however, Seller will not be responsible to the extent that the claim, liability, loss or damage arises out of the sole negligence or fault by Purchaser. If any action or proceeding is brought or if any claim is made or asserted against Purchaser or its successors, assigns, or customers by reason of any of the foregoing, Seller agrees, that in addition to any other rights, Purchaser shall have the right to cancel any undelivered portion of any order and return all prior deliveries to Seller for credit or payment.

9. **INSURANCE:** Seller shall procure and maintain, in full force and effect, at its expense, workers' compensation, general liability, product liability, completed operations, and other insurance in form and amount that are customary for similar sellers in the industry, or in such specific amounts as may be provided for elsewhere in the applicable order and shall obtain appropriate endorsements naming Purchaser as additional insured (or, if applicable as an alternate employer with respect to workers' compensation). At Purchaser's request, Seller shall provide Purchaser with the policy of insurance or a certificate of insurance evidencing that such insurance is in effect.

10. **FORCE MAJEURE:** Purchaser shall not be liable for failure to take delivery of the goods or for any postponement in taking delivery of the goods if such failure is caused by an event of Force Majeure. If Force Majeure delays Seller, Purchaser may agree to extend the delivery schedule or terminate any order, provided Seller has provided timely written notice of the occurrence of the event to Purchaser. Force Majeure is defined as any act of God, act of war, act of terrorism, acts of civil disobedience or unforeseeable governmental action, or any other similar or dissimilar cause not caused by the fault of Seller or Purchaser as applicable but shall not include any power, supply, transportation or labor problems of Seller.

11. **INSPECTION AND REJECTION:** All goods are subject to inspection at Purchaser's or its customer's premises. If any goods are found at any time to be defective in material or workmanship or otherwise not in conformity with Purchaser's specifications, Purchaser at its election, in addition to any other rights which it may have shall have the right to (i) reject the goods, in whole or in part; (ii) accept the goods at a reasonably reduced price; (iii) reject the goods and require replacement of rejected goods; or (iv) purchase substitute goods or services elsewhere and Seller shall be liable for any resulting loss. The right to reject goods shall not be waived or deemed to have been waived by the fact that payment has been made or in the event of a latent defect the fact that the goods have been inspected or processed. Goods rejected as not conforming to the applicable order shall be held at Seller's risk for a reasonable time after rejection and shall be returned or disposed of at Seller's expense, including transportation both ways, and handling costs and according to Seller's instructions. Goods returned shall not be replaced by Seller without written authorization from Purchaser.

12. **TAXES:** Except as may be otherwise provided in the applicable order, the contract price includes, and Seller is responsible for, the payment of all sales, use, excise, value added, goods and services, business (franchise or privilege), and other such taxes, any taxes imposed on Seller which are based on revenue, income, net income, net assets, net worth or capital and any taxes imposed in lieu thereof and all duties, fees, levies, charges or other assessments of whatever nature imposed by any governing authorities or any applicable jurisdiction in connection with the performance under the applicable order. Notwithstanding the foregoing, with respect to Canadian transactions, any Harmonized Sales Tax (HST) shall be billed in accordance with local custom and practice.

13. **ASSIGNMENT:** Seller shall not assign any order or any interest therein or any payment due or to become due hereunder without the written consent of Purchaser and any assignment without such consent shall be void.

14. **SET-OFF:** All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other contracts between Purchaser and Seller (or any subsidiaries or affiliates of Seller), whether such set-off or counterclaim arose before or after the date of the applicable order.

15. **BANKRUPTCY:** In the event of any actual or threatened bankruptcy, reorganization, receivership, insolvency, making an assignment for the benefit of creditors, liquidation, dissolution or other financial or organizational instability of Seller, Purchaser shall have the right, in addition to other rights and remedies it may have at law, in equity or under this order, to immediately terminate all outstanding orders and to cancel any unfulfilled portion of outstanding orders and all other contracts between Seller and Purchaser, without any liability whatsoever.

16. **GOVERNING LAW and COMPLIANCE WITH LAW:** With respect to sales to Purchaser to, from or within the United States, unless otherwise specified in the applicable order, the order and the contract formed hereby will be governed by the laws of

the State of Illinois or the state where Purchaser's plant at which shipment is to be made is located, including the Uniform Commercial Code, and without reference to conflict of law principles or rules.

17. RISK OF LOSS: Until the goods have been received by Purchaser at its plant (or other point specified in the applicable order) all risks, or loss or damages shall be on the Seller, regardless of any F.O.B. price specified on the face of the order.

18. PROOF OF SHIPMENT: Seller shall forward to Purchaser with the invoice, the express receipt or bill of lading, signed by the carrier, evidencing the fact that shipment has been made. Purchaser's count as to the contents of any shipment will be accepted as final and conclusive. The cash discount period, if any, will run from receipt of the goods by Purchaser or the date of the invoice, whichever is later.

19. WAIVER; MODIFICATION: All waivers of any breach of these terms and conditions, or any provision of the applicable order, must be in writing and must be signed by the waiving party. No such written waiver by any party at any time of any breach of any provision of an order or of the requirements of any provision of such order, shall be deemed a waiver or consent to a subsequent breach or waiver of the same or any other provision. No modification of the terms of an order shall be binding on Purchaser unless consented to by it in writing signed by a duly authorized officer of Purchaser. Except for such writing, no document and no evidence of any oral conversation, usage of the trade, courses of dealing, or performance shall be deemed to add to, modify, waive or terminate any of the terms of an order.

20. WAIVER OF MECHANIC LIEN CLAIMS: Where Seller agrees to perform certain work for or supply materials to Purchaser in connection with a project for repair, construction, modification, improvement or completion or installation at any premises owned or occupied by Purchaser, in those jurisdictions where it is permitted, Seller waives, to the fullest extent permitted by law, for itself and for all its subcontractors and for each mechanic, workers, and material supplier, all right to any lien or claims upon (i) any work to be performed and completed for or by Seller (including but not limited to the furnishing of all materials, apparatus, machinery, fixtures, tools, equipment, services and labor), (ii) the project, (iii) the premises and the project site, and expressly agrees that no lien shall attach to the real estate, the owner thereof or property to which the premises are a part. All completed work shall be delivered free from any and all liens, claims or encumbrances of any description whatsoever. Seller agrees to execute and to cause each mechanic, worker, material supplier or subcontractor to execute, any and all documents and do all acts and things whatsoever which may be in any way necessary or proper to affect said waiver and agreement. THE LEGAL EFFECT OF THIS AGREEMENT IS THAT NO LIEN OR CLAIM MAY BE FILED OR MAINTAINED BY ANYONE. The benefits of said waiver of lien shall inure to Purchaser and to any other owner of the work, the project, the premises and the project site or any interest or estate therein.

21. SEVERABILITY: If any provision of any order or the contract arising from it shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the order shall be construed as if such invalid, illegal or unenforceable provision had not been included and all other provisions and terms shall remain valid and binding.

22. CONFIDENTIALITY: Purchaser shall retain title to any technical information, trade secrets, samples, drawings, blueprints, patterns, dies, molds, tools, plates, cuts, gauges, items, and materials furnished or paid for by Purchaser in connection with any and every order. Seller agrees to hold all information disclosed by Purchaser in confidence and to take all reasonable precautions to maintain its confidentiality. Any such items in Seller's possession shall be held at Seller's risk, and if lost, damaged, or destroyed shall be replaced by Seller without charge to Purchaser. Such items shall be used exclusively in the production of the goods, and their use for any other purpose is prohibited unless previously approved by Purchaser in writing. Purchaser's name or the name of any of its subsidiaries or products is not to be used directly or indirectly by Seller for advertising or promotional purposes without the prior written consent of a duly authorized officer of Purchaser.

23. LIMITATION ON ACTION: Any action, suit or proceeding arising out of or relating to any order may be commenced at any time within four (4) years from the date on which the cause of action which is the basis of the action, suit or proceeding accrued.

24. HEADINGS: Headings are for convenience of reference only and shall not limit or govern the interpretation of the provisions hereof.

25. SURVIVAL: Provisions of any order which by their nature should apply beyond delivery and acceptance of the goods shall remain in full force and effect after termination or expiration of such order including, without limitation, the following

provisions: limitation on liability, warranties, indemnification, taxes, setoff, governing law and compliance with law, limitation on action, and survival.

26. LANGUAGE: The parties expressly agree that all orders and all related documents be written in the English language.

27. SAFETY: Anything herein to the contrary notwithstanding, it is expressly understood and agreed that the Seller/Contractor in addition to being solely responsible for the care, custody and control of its tools, equipment and machinery and those of the Purchaser, if applicable, shall also be solely responsible for the safety and protection of its employees, agents, invitees, and subcontractors, and shall perform all work in accordance with the requirements of all applicable laws, including, but not limited to, the Occupational Safety and Health Act, and all applicable rules and regulations under such laws.