

## GENERAL TERMS AND CONDITIONS OF PURCHASE (REVISED 02-28-2022)

**1. GENERAL.** These General Terms and Conditions of Purchase (collectively, the "Terms") set forth the terms and conditions pursuant to which TH Foods, Inc. ("Buyer") will purchase from Seller the goods ("Goods") and/or services ("Services") described in Buyer's Purchase Order (the "Order").

**2. ACCEPTANCE.** This Order constitutes Buyer's offer to purchase the Goods and/or Services from Seller. This Order expressly limits acceptance to the Terms stated herein and any additional terms and conditions incorporated herein by reference or annexed hereto by Buyer. (For clarity, even though Seller's Quote, Quote Number and/or other Seller document is or may be referenced in this Order, such reference is for convenience only and refers only to the technical description of the Goods and/or Services. Any other additional, inconsistent and/or contrary terms and conditions set forth therein are rejected by Buyer and shall not become part of this Order and the agreement between the parties, unless otherwise expressly agreed in writing by Buyer. Acceptance of this Order by Seller shall occur upon Seller's (a) written acceptance of this Order or (b) commencement of (i) performance of Services or (ii) production of Goods pursuant to this Order.

**2A. CHANGES.** No changes or modifications shall be made to this Order unless mutually agreed in a written addendum referring to this Order and signed by authorized representatives of Buyer and Seller.

**3. INVOICES/PAYMENT TERMS.** (a) Invoices shall be consistent with, and submitted in accordance with the payment terms set forth in, this Order and shall contain Buyer's purchase order number, item number, description of item, quantities, unit prices, extended totals, and Seller's packing slip number. Seller shall furnish to Buyer, upon Buyer's request, Bills of Lading, express receipts, or other proof of shipment/delivery. Payment of invoices shall not constitute acceptance of Goods or Services by Buyer, and shall be subject to adjustment for errors, shortages, defects, or other failure of Seller to meet the requirements of this Order. All payments made are to be credited by Seller against the invoice(s) referenced on the payment. (b) If no payment terms are stated in the Order, payment terms shall be as follows: (i) for Orders having a value less than \$50,000.00, Net 30 days after (A) the Goods have been received by Buyer or (B) the Services have been fully performed; and (ii) for Orders having a value equal to or greater than \$50,000.00, (A) 30% down payment upon execution of this Order by Seller, (B) 50% upon completion of manufacture and prior shipment of the Goods from Seller's facility or performance of the Services (as applicable), and (C) 20% upon Buyer's acceptance of the Goods and Services.

**4. SHIPMENT.** Time and quantity of shipment of the Goods and performance of Services are of the essence of this Order. If Seller fails to timely ship the Goods or perform the Services (on or prior to the "Req. Date" set forth on the Order), (a) Buyer, at its option, may extend the period for shipment or performance for a period of up to five (5) weeks; provided however, that for each week (or part thereof) that the shipment of the Goods or performance of the Services has been delayed, Seller shall pay to Buyer (as damages and not a penalty) an amount equal to one-percent (1%) of the gross purchase price of this Order per week (or part thereof) up to a maximum amount equal to five-percent (5%) of the gross purchase price of the Goods and Services described in this Order; and/or (b) if Buyer does not so extend the period of performance and/or shipment, or shipment of the Goods or performance of the Services has not occurred within any five (5) week period granted by Buyer, Buyer may, at its sole discretion, upon written notice to Seller and without further liability and/or prejudice to all rights or

remedies of Buyer, terminate this agreement immediately, and upon any such termination, Seller shall refund all amounts paid by Buyer to Seller for the Goods and Services prior to the date of termination.

Seller shall secure and arrange for transportation of the Goods pursuant to this Order. Unless otherwise agreed in this Order, Seller shall ship the Goods in an appropriate and suitable manner via a carrier of good repute and standing selected by Seller. Buyer shall reimburse Seller for the reasonable freight charges incurred by Seller to effectuate the shipment of the Goods to Buyer. All Goods must be packed and properly marked in accordance with any instructions contained in this Order, and if no instructions are so contained, then Seller shall pack and mark all Goods in a manner that will provide for efficient handling and preclude damage to the Goods. All packaging must conform to the requirements of the carrier's tariffs. Packing lists must accompany each shipment. Immediately after the completion of the loading of the Goods, Seller shall advise Buyer in writing of the shipment of the Goods, which such advise shall include the Order number, the name of the transportation company, the point of shipment and delivery, the description of the Goods and packing, the quantity loaded, the proposed invoice amount and other essential information to enable Buyer to prepare to receive the Goods.

**5. PRICE.** The price(s) specified on in the Order are firm and are not subject to any increase. Delivery/shipping terms shall be DDP INCOTERMS 2020 Buyer's facility (destination point), unless otherwise specified in this Order; inclusive of loading. The risk of loss and the duty to insure all Goods for their full (100%) replacement values shall remain with Seller until the Goods are delivered to Buyer's dock. The forgoing to the contrary notwithstanding, unless otherwise noted on this Order, the reasonable cost of shipping and insurance for the full (100%) replacement value of the Goods will be billable to Buyer at cost as a prepay and add line item on the final invoice.

**6. CHARGES.** In the event of failure or delay in shipment of the Goods and/or performance of the Services due to any reason whatsoever attributable to Seller, Seller shall, without prejudice to any other rights or remedies Buyer may have, reimburse to Buyer demurrage incurred at Seller's facility and any other excess freight charges payable by Buyer with respect to the Goods.

**7. WARRANTY.** Seller warrants that upon delivery of the Goods to Buyer, Buyer shall have good and merchantable title to the Goods and Services free of any and all restrictions, encumbrances, liens, security interests or claims of any third parties, (b) the Goods shall at all times fully conform to any and all specifications, descriptions, drawings and other documents furnished to or by Buyer, and shall be merchantable, of new, good material and workmanship, free from defects, and shall be fit or suitable for the purpose(s) intended by Buyer and (c) all Services shall be performed in a professional, workmanlike manner and shall conform to industry standards/practices. Seller shall be responsible for all defects of the Goods and performance of Services at any time after delivery and/or performance, notwithstanding inspection and acceptance of the Goods or Services by Buyer. Rejected Goods and Services are to be repaired (with new parts and components) or replaced at Seller's sole cost and expense with new, conforming Goods (or Services are to be re-performed) within the fastest reasonable time after notice of rejection by Buyer. In addition, the quantity of Goods or Services set forth in this Order may be reduced by the number of rejected items. Seller further warrants that the Goods and Services will (a) comply with all applicable federal laws and regulations and will be in compliance with all applicable national standards

and codes (which are hereby incorporated and made a part of this Order) and (b) not infringe upon the proprietary rights of any third parties. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods or Services with the foregoing warranties. Payment by Buyer shall not constitute an acceptance of Goods or Services or a waiver of any rights of Buyer hereunder or otherwise available to Buyer.

**8. INDEMNITY AND INSURANCE.** (a) Seller shall defend, indemnify and hold Buyer and its officers, directors, agents, employees and representatives harmless from and against any liability, loss, damage, penalty, cost, expense and disbursement (including attorney's fees) relative to: (i) any personal injury, death or property damage as a result of any claim or dispute caused by, due to or relating to the Goods or Services, Seller's performance hereunder; (ii) Seller's breach of this Order, or any defect or malfunction of the Goods or Services or any infringement of any patent, trademark or any other intellectual property rights of any third parties worldwide; (iii) Seller's violation of applicable law; and/or (iv) claims by Seller's employees, subcontractors, or agents relating to compensation, benefits, and employer taxes or similar claims relating to such personnel, which indemnities shall survive the termination of this Order.

(b) Seller shall maintain the following insurance: (i) Comprehensive General Liability in the minimum amount of \$2,000,000 combined single limit per occurrence with coverage for bodily injury/property damage, including coverage for contractual liability insuring the liabilities for which Seller would be responsible in connection with this Order, products liability, contractors protective liability, where applicable, collapse or structural injury and/or damage to underground utilities, where applicable; (ii) Automobile Liability Insurance covering bodily injury/property damage and all owned, hired and non-owned automotive equipment used in the performance of this Order in the amount of \$2,000,000 combined single limit each occurrence; (iii) Employers' Liability in the amount of \$2,000,000 each occurrence; (iv) Property Insurance covering the full value of all goods and services owned, rented or leased by Seller in connection with this Order and covering damage to property in Seller's care, custody and control; and (v) appropriate Workers' Compensation Insurance protecting Seller from all claims under any applicable Workers' Compensation and Occupational Disease Act. Buyer shall be named as additional insured under Seller's Comprehensive General Liability policy for any and all purposes arising out of or connected to this Order. Upon request, Seller shall furnish Buyer an endorsement showing that Buyer has been named an additional insured and a certificate of insurance completed by its insurance carrier(s) certifying that insurance coverages are in effect and will not be canceled or materially changed except ten (10) days after Buyer's written approval. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurer, Buyer, its affiliates and their respective employees for all losses and damages covered by the insurances required in this section.

**9. TERMINATION.** Buyer may at any time terminate this Order for convenience, in whole or in part, by written notice to Seller, whereupon Seller shall immediately terminate all work pursuant to the terms of such notice and without any further liability of Buyer, except to the extent set forth in the following sentences of this section. Buyer shall be liable only for the cost of Services actually performed as of the date of termination. If the Goods cannot be sold to other purchasers, Seller shall within 30 days of the notice advise Buyer of the percentage of the Goods/work that

has been completed as of the termination date ("work in progress") and Buyer shall only be responsible for payment of the dollar amount of such work in progress (subject to the following sentences of this section) in exchange for Seller transferring such work in progress to Buyer free and clear of all encumbrances. Buyer's maximum liability for a terminated Order hereunder shall not exceed the cost to Seller, excluding profit, overhead or losses, of the work in process less, however the agreed value of any items used or sold to other purchasers by Seller. Buyer will make no payment for finished work, work in process or raw materials fabricated or procured by Seller unnecessarily in advance (or in excess) of Buyer's delivery requirements. The payment provided for in this section shall constitute Buyer's sole and exclusive liability in the event this Order is terminated as provided herein. The foregoing provisions of this section shall not apply to any termination by Buyer for default of Seller.

**10. GOVERNMENTAL APPROVAL.** Seller shall obtain all governmental approvals necessary for the performance of this Order. Buyer shall not be responsible for failure or delay in obtaining any governmental approval necessary for the performance of this Order.

**11. FORCE MAJEURE.** If Buyer's or Seller's performance hereunder is affected or prevented by force majeure, including without limitation acts of God, acts of terrorism, perils of the sea, war, declared or not, civil commotion, blockade, arrest or restraint of government, rulers or people, requisition of vessel, strike, lockout, sabotage, other labor dispute, explosion, accident, governmental order or regulation, or any other causes beyond the reasonable control of the affected party, then the affected party shall not be liable for loss or damage, or failure or delay in performing its obligations hereunder and may extend the time of taking delivery of the Goods or Services and performing its other obligations hereunder; provided, that if Seller's performance is extended by more than thirty (30) days, Buyer may terminate this Order without further liability.

**12. GOVERNING LAW.** This Order and agreement of sale between the parties shall be deemed to have been made in Illinois, and this Order, the relationship of the parties, and any and all claims relating hereto shall be governed by and construed in accordance with the substantive internal laws (including the Illinois Uniform Commercial Code) of the State of Illinois without regards to conflicts of laws principles; provided however, that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Order and that the same is expressly rejected.

**13. ARBITRATION.** All disputes, controversies or differences arising out of or in relation to this Order or the breach hereof, 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 arbitration. The number of arbitrators shall be three (3). The arbitrators shall have no authority to change the terms of this Order or 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 Buyer may be entitled to equitable relief, Buyer may bring an action in any appropriate court to obtain such equitable relief.

**14. WAIVER.** Any failure or delay of Buyer to require full performance by Seller of the terms hereof shall not affect the right of Buyer to enforce the same. The waiver by Buyer of any breach of any provision of this Order in any instance shall not be construed as a waiver of any succeeding breach or waiver of the provision itself.

**15. ENTIRE AGREEMENT AND MODIFICATION.** These Terms together with the Order (and any schedules/exhibits

attached thereto or referenced therein) constitute the entire agreement between the parties hereto and supersede all prior or contemporaneous communications or agreements or undertakings with regard to the subject matter hereof. This Order and these Terms may not be modified nor may any right be waived except in a writing signed by the duly authorized representatives of Buyer and Seller. Seller shall not assign this Order or delegate any of Seller's rights and obligations hereunder without the express written consent of Buyer.

**16. DOCUMENTATION.** At no additional cost or expense to Buyer, Seller shall provide to Buyer any and all documents that are or may be useful to Buyer to install, start up, inspect, repair, maintain or otherwise service the Goods and Services (including, but not limited to, all user manuals, installation manuals, installation requirements, maintenance/repair manuals, operation manuals, training manuals, list of recommended spare parts, mechanical/sub-assembly drawings, trouble-shooting guides, program source code in their native formats and any other documents necessary for the long-term maintenance and servicing of the Goods) collectively, the "Documents". Such Documents shall be provided to Buyer (a) as one (1) electronic and three (3) bound paper copies (b) at least four (4) weeks prior to shipment of the Goods or performance of the Services.

**17. ACCEPTANCE TESTING.** Buyer reserves the right to engage in and/or participate in acceptance testing of the Goods and Services at (a) Seller's place of business (i.e., a factory acceptance test(s) ("FAT(s)")) prior to shipment and (b) Buyer's place of business (i.e., a site acceptance test ("SATs")) at Buyer's facilities after installation of the Goods and/or performance to assure compliance with this Order.

Seller shall conduct a FAT at its premises prior to the shipment of the Goods to demonstrate that the Goods comply/perform in accordance with this Order. The initial FAT shall be at Seller's cost and Buyer shall have the right to be present (at its own expense) at such FAT to assure that the Goods perform in accordance with this Order. Buyer reserves the right to conduct an additional FAT(s) at Buyer's expense to further demonstrate the compliance and functionality of the Goods; provided however, if the additional FAT(s) is required due to Seller's failure to demonstrate compliance of the Goods on a previous FAT, the expense of such FAT(s) shall be borne by Seller. After Seller has successfully completed a FAT, any additional testing and cost of testing shall be agreed upon in writing between Seller and Buyer before any such testing commences. The methods of testing shall be agreed upon in writing prior to testing; provided however, that Buyer shall have the right to require a FAT(s) to confirm/assure satisfactory, continuous operation of the Goods. Seller shall make all necessary accommodations to Buyer to facilitate such testing. Any and all failures to meet any of the requirements of this Order shall be corrected before the Goods are shipped from Seller's facility. If the Goods fail to pass the FAT(s), Buyer may terminate this Order and Seller shall refund all amounts paid by Buyer to Seller prior to the date of termination.

Within sixty (60) days after Buyer's receipt of the Goods at Buyer's facility, Buyer shall have the right to conduct a SAT(s) at Buyer's premises to demonstrate that the Goods are capable of consistently performing in compliance with the specifications and other requirements set forth in the Order. After installation at Buyer's facility, Buyer shall have the additional right to conduct a SAT(s) of up to 72 continuous hours to assure compliance with this Order. If Buyer determines that the Goods have not passed the SAT, Seller shall have the right to observe and participate in an additional SAT conducted at Buyer's facility. If the Goods perform in accordance with specifications during such additional

SAT, Buyer shall pay Seller's reasonable cost and expenses relative thereto. If the Goods fail to successfully achieve/pass such additional SAT, the Seller shall correct all deficiencies successfully complete such SAT to demonstrate that the Goods comply with the requirements of this Order and the specifications for the Goods. If the Goods fail to pass such SAT, Buyer may terminate this Order and Seller shall refund all amounts paid by Buyer to Seller prior to the date of termination. Buyer reserves all rights and remedies under the Uniform Commercial Code or as otherwise available at law in the event that the Goods and/or Services fail to successfully pass the FAT(s) or SAT(s) and/or are otherwise non-conforming. Any inspection or testing of the Goods and Services at Seller's or Buyer's facilities shall not relieve Seller of its obligations under this Order, including, but not limited to, any warranty obligations hereunder.

**18. COMMUNICATIONS.** For the purposes of this Order, "writing" shall also include any communications forwarded to Buyer or Seller by email.

**19. INTELLECTUAL PROPERTY; CONFIDENTIALITY.**

(a) Buyer has expended substantial time, effort and money in the research and development of various recipes, formulas and processes relative to the production of its products 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 Buyer and no rights of any nature whatsoever are granted, or shall be deemed to be granted, to Seller by this Order, Buyer's purchase of Goods and/or Services from Seller or otherwise. Furthermore, Seller agrees that Buyer shall have the right to utilize the Goods and/or Services provided by Seller without restriction and that Seller shall indemnify and defend Buyer in the event that a third party shall claim that the Goods and/or Services or the use thereof infringe the rights of any such third party. (b) During or in conjunction with the delivery and performance of this Order, Seller may have access to certain information relating to Buyer's business including, but not limited to, data, documents, records and other materials, written, electronic or in other media, relating to or constituting Buyer's IP, financial, sales, and operations information, documents, records, opinions, analyses, charts, computer programs, product designs, shapes, concepts, formulas, recipes, ingredients and flavors, requirements, manufacturing/baking processes, techniques, systems, machinery, procedures, and technology, marketing information, and any other information whatsoever owned and/or used by Buyer (collectively, "Confidential Information"). It is essential that all Confidential Information be retained in strict confidence. Accordingly, all Confidential Information of Buyer shall (i) be held in strict confidence by Seller, (ii) not be disclosed by Seller to any third party whatsoever and (iii) not be used by Seller for any purpose whatsoever other than for the benefit of Buyer. In addition, Seller shall not disclose to others, directly or indirectly, the fact that it has an interest in this Order or is supplying Goods or Services to Buyer. (c) Any disclosure or misappropriation of any IP or other Confidential Information in violation hereof by Seller would cause the Buyer irreparable harm, the amount of which may be difficult to ascertain and, therefore, Seller agrees that Buyer 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 the Buyer shall deem appropriate (without the posting of any bond, which Seller waives), such right of Buyer to be in addition to the remedies otherwise available at law or in equity.