

TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE OF ORDER. An acknowledgment of this Order shall be communicated by Seller to GKI Foods LLC ("Buyer") within (2) days after it is received by Seller. The earlier of (i) Buyer's receipt of this acknowledgment and (ii) Seller's initiation of performance under this Order with respect to the description of goods or services to be furnished, quantities, prices and delivery and/or performance date(s), shall constitute acceptance of this Order by Seller, including all of the terms and conditions contained in this Order. Acceptance of this Order is limited to the terms and conditions stated in this Order. Any additional or different terms or conditions proposed by Seller, including those contained on Seller's acknowledgment form, if any, delivered to Buyer, are rejected unless agreed to in writing by a duly authorized representative of Buyer.

2. CHANGES. Buyer may at any time by notice to Seller make changes in the goods or services to be furnished pursuant to this Order in any of the following respects: (a) Buyer's specifications, designs or drawings in the event goods ordered are to be specially manufactured for Buyer, (b) method of shipment or packing; and/or (c) place or time of delivery. If any such change affects the cost or delivery or performance schedule of goods and/or services to be furnished by Seller, an equitable adjustment shall be made; provided that Seller submits to Buyer in writing a claim for such adjustment within ten (10) days following receipt by Seller of the change notice and that a duly authorized representative of Buyer agrees in writing to such adjustment. Nothing contained herein or otherwise, including a failure of the parties to agree upon the adjustment to be made pursuant to this paragraph, shall excuse Seller from proceeding without delay with performance under this Order as changed.

3. SHIPMENT; DELIVERY. No additional charge shall be made to Buyer for containers, packing or drayage unless expressly agreed to in writing by Buyer. Goods shipped by freight or express classification shall be packed, marked and described as specified by Buyer and, consistent with such specifications, the agreed upon quantity of goods to be shipped and delivery date(s), shall be shipped in such a manner as to obtain the lowest possible rate under the freight or express classification. Seller shall be responsible for all damage to goods due to failure to pack or, when performed by Seller, to load properly and securely. Seller shall comply with all shipping instructions specified on the face of this Order or otherwise specified by Buyer. Time is of the essence of this Order, and, if goods or services are not furnished strictly in accordance with the delivery and/or performance date(s) specified in this Order, Buyer reserves the right to cancel this Order, in whole or in part, upon notice to Seller, to procure substitute goods and/or services from any third party(ies) and to charge Seller with any additional cost of such substitute goods and/or services and all other losses Buyer incurs as a result of Seller's failure. Any provision in this Order for delivery of goods or providing of services in installments shall not make the obligations of Seller severable. In the event Seller delivers any goods more than five (5) days before their scheduled delivery date(s), Buyer may either reject such goods or accept them and withhold payment until it would have become due had the goods been delivered on time. Title to the goods subject to this Order shall pass to Buyer upon delivery to the end destination specified by Buyer unless mutually agreed in writing by Buyer and Seller. Passage of title under this section shall not limit Buyer's full right of inspection and rejection nor shall it constitute final acceptance.

4. EXCESS QUANTITIES. Buyer may reject any quantity of goods shipped by Seller in excess of those ordered. However, such over shipments, to the extent accepted, shall be subject to all of the terms and provisions contained in this Order without exception.

5. INSPECTION. All goods ordered pursuant to this Order are subject to inspection and approval by Buyer at Buyer's and/or Seller's premises. Seller shall permit Buyer access to Seller's facilities for purposes of such inspection and to allow Buyer or any of Buyer's affiliates to witness Seller's manufacturing processes in operation. In the event any goods and/or services covered by this

Order do not conform to Buyer's specifications, drawings, designs or instructions, with any guarantee or warranty of Seller or with any requirement of this Order, Buyer shall have the right to reject all such goods and services and, if such goods have been delivered, return them at Seller's expense. In such event, Buyer may cancel this Order or require Seller to ship conforming goods within ten (10) days. Alternatively, Buyer may accept that portion of the goods delivered hereunder that conform with the terms of this Order, return the balance to Seller at Seller's expense, and pay only the proportionate amount of the total price stated in the Order that corresponds to the quantity accepted, regardless of whether such lesser quantity is ordinarily sold at a higher price. Seller shall reimburse Buyer for the cost of inspecting goods and/or services rejected by Buyer in accordance with this paragraph and shall bear the risk and expense of the return from Buyer of such rejected goods. Neither receipt of nor payment for any goods and/or services shall be deemed acceptance thereof. No rights of Buyer shall be waived or obligations of Seller affected by virtue of Buyer's inspection.

6. INVOICING AND PAYMENT. A separate invoice shall be issued for each shipment or separately performed service. Unless otherwise specified in this Order, no invoice shall be issued prior to Seller's furnishing of the applicable goods or complete performance of the applicable services, and payment shall not be due prior to receipt of the goods or performance and acceptance of the services and of a correct invoice.

7. TAXES. Except as otherwise specified on the face of this Order, Seller shall pay and has included in the price of goods or services specified on the face of this Order all federal, state and local sales and use tax, transportation taxes and other taxes or governmental charges which are required to be imposed in connection with the goods and/or services ordered and by reason of their sale, delivery and performance unless prohibited by law. Seller shall indemnify, defend and hold harmless Buyer from and against, and reimburse Buyer for, any expenditure Buyer may be required to make on account of Seller's failure to pay such taxes or other governmental charges.

8. PRICE WARRANTY. Seller warrants that the price of the goods and/or services covered by this Order, absent a commodity contract price, does not exceed Seller's lowest prices in effect on the date of this Order for comparable quantities of similar goods and/or comparable services. If Seller makes a general price reduction of such goods or services prior to delivery or performance of any thereof, such reduction shall be applied to all remaining deliveries and performance pursuant to this Order.

9. GUARANTEES. Seller guarantees that all goods delivered and/or services performed pursuant to this Order shall be free from all claims of unfair competition and of infringement or wrongful use of any patent, trademark, trade secret or copyright by reason of the manufacture, sale or use of any such goods or services, except for goods or services for which Buyer furnishes complete specifications. Seller further guarantees that it has complied with and shall comply with all federal, state and local laws and ordinances and all lawful orders, rules and regulations applicable to Seller's performance of its obligations pursuant to this Order.

10. WARRANTIES. In addition to the other warranties and guarantees set forth herein, Seller warrants that all goods delivered and/or services performed pursuant to this Order (a) shall be free from all patent and latent defects in material, workmanship and/or packaging and shall comply with the terms and conditions contained in or established pursuant to this Order, (b) shall conform strictly with Buyer's specifications, drawings and approved samples, if any, (c) shall be free from all patent and latent defects in design except only to the extent the goods are manufactured or the services are performed pursuant to detailed designs furnished by Buyer, (d) shall be merchantable and fit for Buyer's intended purposes and (e) shall conform with all other express warranties of Seller. These warranties shall remain in effect for such period as is established in this Order or otherwise by agreement of the parties and in no event less than the greater of Seller's normal warranty period or for twelve (12) months following Buyer's receipt of

such goods and/or acceptance of such services and shall extend to Buyer's affiliates, successors and assigns and to the customers of each of them. In the event of any breach of any of the foregoing warranties, Buyer shall have the right to return or reject the non-conforming goods and/or services at Seller's risk and expense and to require Seller, at Buyer's option, to repair or replace such defective goods and/or services or issue a full refund therefore. Repair or replacement shall occur within ten (10) days after notice of breach by Buyer unless otherwise agreed by a duly authorized representative of Buyer.

11. INDEMNIFICATION. Seller shall defend, indemnify and hold harmless Buyer, its affiliates, successors and assigns and its and their customers from and against any and all actions, claims, demands, suits, losses, costs (including attorneys' fees and costs), damages, judgments and expense of every kind and nature arising from the following: (a) death, personal injury and/or property damage resulting, or alleged to have resulted in any way, from the goods delivered and/or services provided pursuant to this Order; and (b) any failure of the goods delivered and/or services provided pursuant to this Order to comply fully with, or any other breach of, any of the warranties and guarantees of Seller whether or not contained in this Order.

12. PROPERTY FURNISHED TO SELLER BY BUYER. Unless otherwise agreed to in writing by Buyer, all designs, specifications, drawings, special dies, molds, patterns, jigs, fixtures and any other property furnished to Seller by Buyer, or specifically paid for by Buyer, for use in the performance of this Order shall be and remain the sole property of Buyer, shall be segregated from Seller's property and marked as Buyer directs to evidence Buyer's ownership thereof, shall be subject to return to Buyer or other disposition at any time upon Buyer's instruction, shall be used exclusively in the manufacture of goods and/or providing of services for Buyer and shall, in the case of tangible property, be insured by Seller, at Seller's expense, while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Buyer. Seller shall furnish Buyer a copy of the policy or certificate of such insurance upon demand with the appropriate loss payee endorsement. Seller shall execute and deliver to Buyer such other or further agreements relative to property furnished by Buyer to Seller as may be requested by Buyer.

13. CONFIDENTIALITY. Seller shall treat as proprietary and confidential all designs, specifications, drawings, samples and any other information ("confidential information") furnished to Seller by Buyer. Unless the written consent of Buyer is first obtained, Seller shall not advertise, publish or cause to be published in any manner any statement mentioning Buyer or any affiliated company of Buyer or the fact that Seller has supplied or contracted to supply to Buyer the goods and/or services required by this Order or quote the opinion of any employee of Buyer or such an affiliate. Seller shall disclose the confidential information only to those employees of Seller with a need to know and who are subject to a binding agreement to protect the confidentiality thereof and shall not copy such information or disclose such information to any other individual or entity without Buyer's prior written permission. Seller shall use the confidential information only to provide the goods or services required pursuant to this Order. Upon completion or termination of this Order or when so directed by Buyer, Seller shall return all such confidential information to Buyer.

14. BUYER'S RIGHT TO USE INFORMATION DISCLOSED BY SELLER.

Unless otherwise expressly stated in this Order or agreed to in writing by a duly authorized representative of Buyer, Buyer shall have the right to use, for any purpose, unpatented and non-copyrighted information concerning Seller's products, manufacturing methods and/or processes which Seller shall disclose to Buyer in connection with this Order.

15. DEFAULT BY SELLER. Buyer may cancel this Order, in whole or in part, without any liability whatsoever, except for its obligation to pay for goods previously delivered and accepted and services previously performed and accepted, by notice to Seller (a) if Seller shall become

insolvent or be unable to pay its debts as they mature, (b) if a petition in bankruptcy is filed by or against Seller, an assignment for the benefit of creditors is made by Seller or a receiver of Seller's assets is appointed, (c) if Seller fails to perform any of its obligations under this Order, including failure to deliver the goods and/or perform the services within the required time period, (d) if Seller fails for any reason to make progress with respect to its obligations so as to endanger performance of this Order in accordance with its terms or (e) if Seller delivers any goods or provides any services which fail to comply with all warranties and guarantees contained or referred to in this Order. In the event Buyer cancels this Order in whole or in part as provided herein, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, goods and/or services similar to those canceled, and Seller shall be liable to Buyer for any costs of such similar goods and/or services which are in excess of the prices therefor specified in this Order.

16. **TERMINATION FOR CONVENIENCE.** Buyer may terminate this Order for convenience as to all goods not yet delivered and services not yet performed and not scheduled for delivery or performance, as the case may be, within 30 days (or such longer period, if any, as was agreed in writing by a duly authorized representative of Buyer) from the date of cancellation without obligation whatsoever to Seller for such termination.

17. **FORCE MAJEURE.** Buyer reserves the right at its option and without liability either to direct suspension of shipment or performance or to cancel this Order, in whole or in part, at any time that Buyer's compliance with this Order or the utilization by Buyer or an affiliate of Buyer of the goods or services covered by this Order is prevented or delayed by any of the following events or circumstances: act of God; war or terrorism; statute, regulation or order of any governmental authority; embargo, act of civil or military authority or act of the public enemy; inability to secure transportation facilities; strike or other labor dispute; accident at Buyer's or Buyer's affiliate's premises; or other contingency beyond Buyer's or Buyer's affiliate's control.

18. **ASSIGNMENT; SUBCONTRACTING; BINDING EFFECT.** Seller shall not delegate any of its duties nor assign any rights or obligations under this Order without Buyer's prior written consent. Any such attempted delegation or assignment shall be void. Seller shall not subcontract for the procurement of any of the goods and/or services covered by this Order, except for the purchase of raw materials and components in the ordinary course of business, without Buyer's written approval. Subject to the provisions of this paragraph, this Order shall be binding upon and inure to the benefit of the successors in interest and assigns of the parties.

19. **DEDUCTION AGAINST SELLER'S INVOICES.** Buyer's obligation to make any payments to Seller shall be subject to the Buyer's right to set off for any claim or credit arising from this Order or any other transaction of Buyer or any affiliate of Buyer with Seller.

20. **WAIVER.** Buyer's failure to insist upon Seller's strict performance of any obligation under this Order shall not constitute a waiver of any right of Buyer to subsequently require strict performance of that or any other obligation of Seller under this Order. The waiver of any term or condition of this Order by Buyer shall not be construed as the waiver of subsequent compliance therewith or with of any other term or condition of this Order.

21. **REMEDIES.** In addition to any rights or remedies established in this Order, Buyer may exercise all rights and remedies available to it under the Uniform Commercial Code of Ohio or otherwise at law or in equity. Such rights and remedies of Buyer shall be cumulative. **BUYER SHALL NOT BE LIABLE TO SELLER FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE UNDER ANY CIRCUMSTANCES WHATSOEVER.**

22. **ENTIRE AGREEMENT; MODIFICATIONS.** Except as otherwise expressly provided in this

Order, this Order contains the entire agreement and understanding of Buyer and Seller relating to the purchase of the goods and/or procurement of services covered by this Order. No modification of any term, condition or provision of this Order shall be binding upon Buyer unless in writing and duly executed by the parties. In the event of any variance between this Order and Seller's acknowledgment, invoice or other writing, the terms and conditions of this Order shall govern.

23. GOVERNING LAW; VENUE FOR DISPUTES. This Order shall be governed by and interpreted in accordance to the law of the State of Ohio. Any litigation under this Order, if commenced by Seller, shall be brought only in a court of competent jurisdiction in the State of Ohio, and Seller hereby consents to such exclusive jurisdiction in the case of any litigation instituted by either party in connection with this Order.

24. NOTICES. All notices and other communications with respect to this Order shall be in writing and shall be sent by first class mail, postage prepaid, to the other party at the address specified on the face of this Order. Notices to Buyer shall be sent to the attention of its Purchasing Department and shall include the number of this Order. Notices shall be deemed given on the date of receipt or the date receipt is refused.

25. SEVERABILITY. If any provision of this Order shall be deemed invalid or unenforceable in any respect, this Order shall be construed as though such unenforceable provision does not appear in this Order and the Order otherwise shall be fully enforceable.

26. HEADINGS. The paragraph headings in this Order have been inserted for the convenience of the parties and shall not be considered in the interpretation or construction of this Order.