

Seattle Gourmet Foods, Inc. Purchase Order Terms and Conditions

1. Terms of Purchase. These Purchaser Order Terms and Conditions (these “Terms and Conditions”) shall govern all purchase orders (each, a “Purchase Order”) placed by Seattle Gourmet Foods, Inc. (the “Purchaser”) to a supplier (“Seller”) for supplies, edible goods, or other merchandise (the “Products”). These Terms and Conditions set forth the entire agreement and supersede any and all prior agreements between Purchaser and Seller regarding the Products. No amendment or modification of any provision of these Terms and Conditions shall be valid unless set forth in a written instrument signed by the party to be bound thereby. Purchaser shall not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions set forth in these Terms and Conditions (whether or not it would constitute a material change) and which has been proffered by Seller in any invoice, shipping document, acceptance, confirmation, correspondence or otherwise, unless Purchaser agrees explicitly to such provisions in writing. Notwithstanding the foregoing, in the event Purchaser and Seller have entered into a separate master agreement that governs the purchase and sale of Products, then the terms of such separate master agreement shall control. Seller’s fulfillment of any Purchase Order shall be deemed acceptance of these Terms and Conditions.

2. Packaging; Marking and Shipping Instructions.

(a) Any trailer, container, warehouse, pallet, or other means used for the transportation or storage of edible Products shall be suitably constructed for food use and properly cleaned to prevent possible contamination, deterioration, or taint, and shall protect the edible Products against deterioration in accordance with the requirements of 21 C.F.R. § 110.80. In addition, each container or pallet shall have an identified lot code indicating the date that the Products were produced and additional lot identification as required by Purchaser in specifications provided to Seller. Codes must also be recorded on the shipping manifest.

(b) All Products shall be properly packed, marked, and shipped in accordance with the requirements of the common carrier transporting such Products and in a manner that will prevent damage or deterioration to the Products. Shipments shall be routed by Seller in accordance with Purchaser’s instructions. Unless Purchaser has arranged for transportation of the Products or has requested the Products be shipped at its cost, Seller shall reimburse Purchaser for all expenses and damages incurred by Purchaser due to improper transport, delivery, packing, marking, or routing. No charges will be allowed for packing, crating, or cartage unless expressly stated on the face of a Purchase Order.

(c) Packing sheets and original bills of lading or freight receipts shall show the Purchase Order number and be included with each shipment.

(d) Time is of the essence in the performance of Seller’s obligations under any Purchase Order. Products must be delivered on the date specified in a Purchase Order, and Seller shall notify Purchaser if Seller is unable to meet such specified delivery date. Should Seller be unable to meet any delivery date specified in a Purchase Order, Purchaser shall have the right to cancel, without further obligation, any remaining unshipped Products. Purchaser reserves the right to cancel any or all of a Purchase Order before the date of

shipment or if delivery of the Products satisfying a Purchase Order is late or delayed for any reason or if the Products do not conform to these Terms and Conditions or the Purchase Order.

(e) Seller agrees that with respect to edible Products it will prepare, maintain and retain complete and accurate books and records relating to the manufacturing, processing, packaging, storage, and delivery of the Products, rejected Products, and production code accountability records. Seller shall also prepare, maintain and retain any other records required to be maintained by federal, state, or local laws and regulations. All production books and records prepared, maintained, or retained by Seller pursuant to this Purchase Order directly related to the Products shall be made available to Purchaser and its representatives for inspection upon reasonable notice at any time during Seller's regular business hours. All such records shall be retained by Seller for a period of at least three (3) years, or longer if required by federal, state, or local laws or regulations or if requested by Purchaser in writing.

(f) In case the Products do not arrive within a specified delivery period, Purchaser reserves the right to withhold payment of the invoice until after the shipment's arrival, with the privilege of taking cash discount at such time.

3. Inspection and Acceptance of Products.

(a) All Products are subject to Purchaser's inspection for quality and workmanship and its approval, notwithstanding any prior payment. Purchaser may reject any Products that do not conform with these Terms and Conditions or the applicable Purchase Order. In addition, Purchaser may conduct an inspection of Seller's facilities at any time to ensure Seller's capacity to meet specification and quality requirements consistently.

(b) All Products rejected shall remain the property of Seller and shall be Seller's responsibility; provided, however, that if any Products include identifying information of Purchaser, then Seller shall dispose of such rejected Products in accordance with instructions from Purchaser. Purchaser shall have the option to return rejected Products to Seller at Seller's sole expense, including all charges for labor, reloading, trucking, and other expenses incidental thereto. Seller shall not replace any Products rejected, except upon written instructions from Purchaser.

4. Representations and Warranties of Seller.

(a) Seller represents and warrants to Purchaser as follows:

(i) All Products sold by Seller (A) are merchantable; (B) are free from all defects of workmanship and materials; (C) conform to these Terms and Conditions and the applicable Purchase Order and (D) are fit for use for any particular purpose specified on a Purchase Order or otherwise disclosed to Seller. If Purchaser has previously acquired like Products from Seller, any changes in ingredient composition, specification, formulation, or process since the previous acquisition must be approved by Purchaser prior to shipment.

(ii) Seller has, or immediately prior to delivery shall have, title to the Products and all rights to transfer the Products to Purchaser free and clear of any liens, encumbrances, or third party claims.

(iii) Seller is a legal entity duly organized and in good standing under the laws of the state

of its organization, with full capacity to sue and to be sued. Seller is authorized to enter into and be bound by these Terms and Conditions and a Purchase Order, and neither these Terms and Conditions nor a Purchase Order shall be a violation of any applicable law or the terms of any material contract, instrument or agreement between Seller and a third party.

(iv) The Products have been produced in compliance with all applicable labor and employment laws and regulations, including, without limitation, the Fair Labor Standards Act of 1938, as amended.

(b) With respect to edible Products, Seller also represents and warrants to Purchaser as follows:

(i) All Products shall not be, as of the date of shipment of such Products, (A) adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended (the "Act") and (B) an article which may not, under the provisions of Section 404, 505 or 512 of the Act, be introduced into interstate commerce.

(ii) All Products have been manufactured, packaged, stored, and delivered in accordance with all applicable federal, state, and local laws and regulations.

(iii) All Products have been shipped from manufacturing facilities that have completed Purchaser's Quality Compliance Assessment, signed an Acknowledgement of Compliance, and have agreed to and are submitting annual third-party audit reports.

5. Indemnification.

Seller agrees to indemnify and hold harmless, and if requested by Purchaser, defend, Purchaser and its shareholders, directors, officers, agents, affiliates, representatives, and employees (collectively, the "Purchaser Indemnified Parties") from and against all claims, demands, expenses, damages (direct and consequential), losses, debts, liabilities, penalties, fines, costs and fees (including reasonable attorneys' fees) (collectively, "Losses") suffered or incurred by any person or entity arising out of or related to (a) the possession, use or consumption of any Product sold by Seller, (b) Seller's breach of any representation or warranty hereunder or under any Purchase Agreement, or (c) Seller's nonfulfillment of or failure to comply with any covenant, agreement or obligation of Seller hereunder or under any Purchase Order.

6. Insurance.

Seller agrees to maintain at all times during which a Purchase Order remains outstanding, and on request submit to Purchaser certificates evidencing a comprehensive general liability insurance policy, including product liability coverage and contractual liability coverage insuring against the liabilities assumed under this Purchase Order, in minimum amounts of \$1,000,000.00 per occurrence for damage, injury or death to persons and \$2,000,000.00 general aggregate, and \$1,000,000.00 per occurrence for damage or injury to property and \$2,000,000.00 general aggregate; an umbrella liability policy with limits of at least \$5,000,000.00 per occurrence and \$5,000,000.00 aggregate. Such insurance will be issued by a company or companies that maintain an A.M. Best's rating of at least A-VII and will name Purchaser as an additional insured and provide that a 30-day

prior written notice of cancellation, nonrenewal, or material policy change will be given to Purchaser. Seller will evidence such insurance coverage by delivering to Purchaser

7. California Transparency in Supply Chains Act of 2010 Certifications.

(a) Seller certifies that all materials incorporated into the Products are sourced, processed, manufactured, packaged, and delivered without the use or involvement of any forced labor, child labor, or human trafficking.

(b) Seller does not presently, and shall not in the future, use any forced labor or child labor as part of its labor force, and it shall not allow any forced labor or child labor in its business or in its supply chain.

(c) Seller does not presently, and shall not in the future, allow any human trafficking in its business or its supply chain.

(d) Seller agrees that the Purchaser or its designee may monitor its compliance with the previous certifications through random product testing, audit reviews, facility inspections, and/or other methods of verification deemed useful by the Purchaser.

(e) Seller agrees to maintain records of any audits conducted at its facilities and of any corrective actions undertaken in response to such audits. Seller shall make such records available for review and inspection by the Purchaser or its designee upon request.

(f) Seller agrees to provide the Purchaser or its designee with updates regarding any remediation efforts required as a result of deficiencies identified during any inspection or audit of the Seller or its facilities.

(g) Seller agrees that it is responsible for maintaining current knowledge of applicable laws pertaining to its operations and the products supplied by it.

(h) Seller agrees that it is responsible for all expenses, including attorneys' fees and court costs, which arise from or relate to any breach or non-performance of any of the foregoing certifications.

8. Invoices.

(a) Payment of Seller's invoice is subject to adjustment by Purchaser for miscalculation, overshipment, shortage, and rejection.

(b) An invoice showing the Purchase Order number, the item number, and a description of the items must be issued for each shipment of goods.

(c) Any applicable sales tax, duty, excise tax, use tax, or other similar tax or charge for which Purchaser has not furnished an exemption certificate must be itemized separately on Seller's invoices.

9. Miscellaneous.

(a) Remedies. No remedy provided in these Terms and Conditions shall be deemed exclusive of any other remedy available to Purchaser and allowed by law.

(b) Governing Law. The rights and liabilities of the parties under a Purchase Order and these Terms and Conditions shall be governed in all respects by the laws of the State of Washington without giving effect to conflicts of laws provisions.

(c) Jurisdiction; Venue. Venue in any action, suit, or proceeding arising out of or related to any Products, a Purchase Order, or these Terms and Conditions shall lie, exclusively in the state and federal courts in King County, Washington.

(d) Assignment. Seller may not assign its rights and obligations under these Terms and Conditions or any Purchase Order, whether directly, indirectly, by operation of law, by a change of control, or otherwise, without the prior written consent of Purchaser.

(e) Notices. Any notice or other communication required or permitted to be given pursuant to these Terms and Conditions or a Purchase Order shall be deemed to have been sufficiently given if in writing and either delivered by facsimile (with electronic receipt), overnight courier service against receipt, or sent by registered or certified U.S. mail, return receipt requested, address to Seller at its last known address (as provided in writing to Purchaser) and to Purchaser at the following address:

Seattle Gourmet Foods, Inc.

19016 72nd Ave S.

Kent, WA 98032

Attention: Vice President of Supply Chain

Fax: 425-656-8059

Phone: 425-656-9076

(f) Recalls. Purchaser shall have sole discretion with regard to all decisions relating to whether to institute an inventory retrieval, recall, or any other action to stop the distribution and/or sale of any products sold by Purchaser (a "Recall"). Seller shall cooperate with Purchaser in executing any recall, including cooperating with any requests to communicate with local, state, federal, or international government agencies concerning a potential or actual recall. If a recall is necessary due to Seller's actions or breach by Seller of these Terms and Conditions or a Purchase Order, then Seller shall be liable to Purchaser for all Losses associated with such Recall. In the event Seller voluntarily institutes a Recall on any Product or it is deemed necessary by a governmental entity to Recall any of the Products for any reason bearing on their quality, functionality, and/or safety, Seller shall comply diligently with its Recall procedures and shall promptly notify Purchaser of such Recall. Seller shall be liable for all Losses associated with such Recall. Upon the request of Purchaser, Seller shall provide Purchaser with a copy of its Recall procedures.

(g) Attorneys' Fees. In the event any action or suit is brought by either party by reason of any default or breach of these Terms and Conditions or a Purchase Order, then the

prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of suit, including reasonable attorneys' fees and costs.

(h) Cancellation. These Terms and Conditions shall apply to all Purchase Orders submitted by Purchaser to Seller. Purchaser reserves the right to cancel any Purchase Order previously submitted to Seller prior to the date of shipping said Products for any reason whatsoever and at any time (including after the date of shipment) in the event of a breach by Seller of any term set forth in these Terms and Conditions or a Purchase Order.