



37TH STREET BAKERY, LLC TERMS AND CONDITIONS OF PURCHASE

1. Applicability.

(a) These 37th Street Bakery, LLC Terms and Conditions of Purchase (these “*Terms and Conditions*”), together with (i) any additional terms or conditions set forth in the purchase order issued by Buyer to Seller (as those terms are defined below) (the “*Purchase Order*”), (ii) any written supply agreement, co-pack agreement, or other written agreement executed by Buyer and Seller relating to the Goods (as defined below) (the “*Supply Agreement*” and together with the Purchase Order, the “*Purchasing Agreements*”); (iii) any other document in which these Terms and Conditions are attached or are incorporated in by reference, and (iv) any attachments, instructions or requirements furnished to Seller by Buyer (collectively, this “*Contract*”) apply to the purchase by 37th Street Bakery, LLC (“*Buyer*”) of the goods and related services described in this Contract (the “*Goods*”) from the seller party to whom the Purchase Order is addressed or who is otherwise a party to a signed agreement with Buyer for the Goods (“*Seller*”).

(b) Seller has read and understands this Contract. If Buyer and Seller are parties to a signed agreement relating to the Goods and incorporating these Terms and Conditions, Seller has accepted this Contract. If Buyer and Seller are not parties to a signed agreement, Seller accepts this Contract, and forms a binding agreement with Buyer, by doing any one of the following: (i) acknowledging its acceptance of the Purchase Order in writing; (ii) commencing any work under this Contract (including, without limitation, shipping the Goods); or (iii) engaging in any other conduct which recognizes the existence of a contract with Buyer with respect to the subject matter of this Contract. Seller’s failure to return an acknowledgment copy of a Purchase Order, even if expressly requested by Buyer, will not preclude acceptance in accordance with the foregoing terms.

(c) Unless otherwise agreed in a signed writing with Buyer, the terms and conditions governing the purchase and sale of the Goods, and any acceptance by Seller of any Purchase Order from Buyer, is expressly limited to the terms of this Contract. Any additional or different terms proposed by Seller (whether in Seller’s quotation, proposal, acknowledgement, invoice or otherwise and whether or not delivered prior to or after entry into this Contract or delivery of a Purchase Order) are expressly rejected by Buyer, are not part of this Contract, and are not binding on Buyer without the express prior written acceptance of such terms by Buyer’s authorized representative. Any reference in this Contract to any quotation, proposal, or any other similar document provided by Seller is solely for the purpose of incorporating the description and specifications of the Goods contained in such document, but only to the extent that such description and specifications do not conflict with the description and specifications contained in this Contract. The parties have agreed and it is their intent that the “battle of the forms” described in Section 2-207 of the Uniform Commercial Code will not apply to this Contract or to any invoice or acceptance form of Seller relating to this Contract. If there is a conflict in any of the documents making up this Contract, the documents will prevail over each other in the following order of precedence: (i) any document specifically agreed to in writing and signed by the parties (including the Supply Agreement); (ii) the terms of any Purchase Order (excluding these Terms and Conditions); (iii) these Terms and Conditions; and (iv) any other requirements or documents that make up this Contract.

2. **Duration.** Unless the Purchasing Agreements specify otherwise, and subject to these Terms and Conditions, the term of this Contract begins on the Purchase Order date (the “*Effective Date*”) and continues for twelve (12) consecutive months following the Effective Date (the “*Initial Term*”). Thereafter, this Contract will automatically renew for successive terms of twelve (12) months (each a “*Renewal Term*” and together with the Initial Term, the “*Term*”) unless Buyer provides Seller with a non-renewal notice at least sixty (60) days before the end of the Initial Term or any Renewal Term.

3. Quantity; Delivery; Transfer of Title.

(a) Unless the Purchasing Agreements requires Seller to manufacture, ship, and/or provide Buyer’s requirements for the Goods, this Contract is not a requirements contract and Seller will provide Buyer the quantity of Goods set forth in the Purchase Order. Buyer will determine the quantity for the Goods based on the needs of Buyer’s customers and market, economic, or other conditions. Buyer may provide Seller with estimates, forecasts, or projections of its anticipated future needs for the Goods (“*Forecasts*”). The parties agree that all Forecasts, whether delivered prior to or during the Term, are for informational purposes only, are based on information provided to Buyer by Buyer’s customers, do not express an intent by Buyer to purchase any minimum quantity or volume of Goods, are not a commitment by Buyer to purchase any particular quantity of Goods, and are not binding on either Buyer or Seller.

(b) Time of delivery and quantity are of the essence. Deliveries must be made in the quantities and at the times specified in a Purchase Order that relate to this Contract or otherwise in accordance with Buyer’s written directions delivered by Buyer to Seller from time to time. Seller agrees to accept each Purchase Order or other written direction issued by Buyer that is consistent with the terms of this Contract. Buyer may change the timing of scheduled shipments, or direct temporary suspension of scheduled shipments without entitling Seller to a price adjustment or other compensation. Should Seller experience or anticipate any delay in performing this Contract, whether or not such delay is excusable under any provision hereof, Seller shall immediately notify Buyer of such delay, its expected duration and the reasons thereof. Neither such notification nor an acknowledgment by Buyer shall constitute a waiver of any delivery schedule.

(c) Unless otherwise specified on a Purchase Order, the Supply Agreement, or otherwise agreed to in writing by the parties, Seller must deliver the Goods *FCA* to Buyer's designated delivery location (Incoterms 2020). Seller will promptly furnish all properly completed documents and other information required to satisfy all customs, tariffs or other applicable governmental regulations including, but not limited to, customs documentation, and certificates of origin, and any other document required by applicable Laws (as defined below). Title and risk of loss to the Goods passes to Buyer upon Buyer's or its customer's receipt of the Goods. If requested by Buyer, Seller will fully cooperate with and coordinate with Buyer or Buyer's customers regarding the shipment and delivery of the Goods.

4. **Packing; Marking; Shipping.** To the extent applicable, Seller must (a) properly mark, pack, and ship all Goods in accordance with the requirements of Buyer, Buyer's customers, the involved carriers, and any applicable Law; and (b) label and/or tag each package according to Buyer instructions or, if no instructions are provided, in accordance with the prevailing standards of the industry. Prior to shipment of the Goods, Seller must provide Buyer sufficient advance warning and notice in writing (including appropriate labels on the Goods, containers and packaging) of any hazardous, dangerous, or restricted material which is an ingredient in or a part of any of the Goods, together with any special handling instructions as may be necessary to advise carriers, Buyer's customer, Buyer and their respective employees of how to exercise the measure of care and precaution which will best prevent bodily injury or property damage in the handling, transportation, processing, use, or disposal of the Goods, containers, and related packaging shipped to Buyer. Unless otherwise agreed in writing by Buyer or set forth in a Purchase Order, Seller shall bear all costs and expenses of marking, packing, and shipping the Goods.

5. **Quality; Nonconforming Goods.** Seller must meet or exceed all quality requirements of Buyer. If a quality standard is not provided in a Purchase Order or otherwise provided to Seller, Seller must manufacture the Goods to the best available industry standard. All Goods are subject to Buyer's inspection and approval at the destination; provided, however, Seller agrees that Buyer may not perform inspections of incoming Goods and waives any right to require Buyer to conduct such inspections. In addition, Buyer or third parties designated by Buyer may, upon reasonable advance notice to Seller, inspect production processes and property and conduct testing at Seller's premises for the sole purpose of verifying Seller's performance under this Contract. Buyer's inspection, testing or failure to inspect or test the Goods does not constitute acceptance of the Goods, effect any right of Buyer, or relieve Seller of any of its responsibilities for testing, inspection, and quality control. Buyer may, at its option, reject any Goods that fail to conform strictly to the requirements of this Contract. If Buyer rejects any Goods, Buyer may elect to, without any liability to Seller, at no charge to Buyer, and at Seller's cost and expense (i) require Seller to immediately replace the Goods; and/or (ii) exercise any other right(s) provided to Buyer in this Contract or available at Law. To the extent applicable, Seller agrees to conduct periodic quality audits (but no less than monthly) on the Goods, raw materials, packaging materials, and Seller's facility. If Buyer or Seller finds any quality issues, Seller, at its cost and expense, agrees to provide (A) an initial assessment of any quality issue within seventy-two (72) hours of any given inspection; and (B) a corrective action plan, with all relevant documentation, within ten (10) days of any given inspection. Seller, at its cost and expense, agrees to provide follow-up on the corrective action plans and implement all recommendations by Buyer that may be reasonably required to maintain a level of quality consistent with the Buyer's requirements. As applicable, Seller, at its cost and expense, will follow Buyer's method of disposition of any non-conforming Goods and shall ensure that any non-conforming Goods have Buyer's labels or packaging removed by Seller prior to disposal. If Buyer is in possession of non-conforming Goods, then Buyer, at its option, may (y) charge Seller for storage and handling and/or (z) dispose of the Goods at Seller's expense.

6. **Seller Obligations.** Without limiting Seller's other obligations under this Contract, to the extent applicable, Seller, at its sole cost and expense, will be solely responsible for the following: (i) oversight and management of the supply chain for the Goods to delivery, including ensuring the traceability of all raw materials and ingredients used in the production of the Goods; (ii) procurement of, inspection of and payment for all raw materials and packaging, in each case to delivery; (iii) not knowingly use defective or non-conforming raw materials (whether procured from Buyer or Seller's suppliers) in the Goods; (iii) immediately notifying Buyer of any defect, late shipment or other issues related to any raw materials or the Goods;; (iv) sampling and testing procedures for the Goods in accordance with the Buyer's requirement or the best available industry standard ; (v) at Buyer's request, provide Buyer, true and complete reports, in such form as requested by Buyer, concerning: (A) the production and shipment of Goods; (B) inventory information by lot number concerning the quantities of finished Goods and any raw materials and packaging materials exclusive to Buyer that are on hand or on irrevocable order, (C) quality control records required to be retained under this Contract or otherwise under applicable Law; (vi) monitor of stock rotation to ensure First In, First-Out inventory movement and to ensure that no aged Goods or non-conforming Goods are manufactured, supplied, or sold to Buyer; and (vii) providing the facilities, land, personnel, software, materials, technical knowledge, training, expertise and other resources reasonably necessary for the proper performance of Seller's obligations under this Contract.

7. **Price and Payment.**

(a) **Price and Invoices.** Unless otherwise provided in this Contract, the prices for the Goods as set forth in the Purchase Order (or otherwise in this Contract) (i) are fixed, (ii) constitute the total prices for all of Seller's obligations in connection with the Goods, (iii) are not subject to increase for any reason, and (iv) include, and Seller is solely responsible for, all other costs and expenses relating to manufacture, packaging, and shipment of the Goods (including any taxes, duties, and insurance). All invoices must be sent to the address or electronic mail address provided by Buyer in order to be processed for payment. The currency in the invoice must be in U.S. dollars.

(b) **Payment.** Unless otherwise set forth in the Supply Agreement or otherwise agreed in writing by the Parties, Seller's undisputed invoice will be due and payable net 60 days from the later of (i) Buyer's receipt of Seller's invoice or (ii) Buyer's or Buyer's customers receipt of the Goods. Seller agrees to accept payment by check or other cash equivalent including electronic

funds transfer. Payment is deemed to be made on the date Buyer's check is mailed or funds transfer is initiated. If a payment date falls on a non-business day in the State of Illinois, the payment due date will be the next business day. Payment of an invoice shall not constitute acceptance of Goods or otherwise be deemed a waiver of any breach of this Contract by Seller (including a breach of any warranty) or any amount otherwise due to Buyer, and does not limit or impair Buyer's right to assert any legal or equitable remedy. Without limiting the foregoing, Buyer may withhold in good faith any disputed amounts until such dispute is resolved by the Parties or by a court of competent jurisdiction and Seller must continue to perform its obligations under this Contract while the dispute is being resolved. Regardless of the items listed on Seller's invoice, Buyer will only be obligated to pay for the Goods listed in a Purchase Order and in the quantity ordered by Buyer. In addition to any right of setoff, deduction or recoupment provided or allowed by Law, Buyer may, without notice to Seller, set off against, and deduct and/or recoup from (A) any amounts due or to become due from Buyer to Seller or (B) any amounts due or to become due from Seller to Buyer including for damages resulting from breaches by Seller of its obligations under this Contract or any other contract between the parties.

8. **Changes.** Seller will promptly make any changes Buyer directs in writing with respect to the Goods or the general scope of this Contract, which may include, as applicable, changes in the formulas, recipes, specifications, processing, inspection, testing, quality control, methods of packing and shipping or the date or place of delivery. If any such change affects the cost or time of performance, Seller must provide Buyer a written notice of a claim for adjustment, along with all sufficient information and documentation in such form and detail as Buyer may direct, regarding the effect on Seller's costs or time of performance resulting from such change within five (5) days after Buyer's notice to Seller of such change. If necessary under the circumstances, the parties will agree on an equitable adjustment (up or down) to the price or delivery terms of this Contract. Seller may not make any changes with respect to the Goods or scope of this Contract without Buyer's prior written consent, which may be given or withheld in Buyer's sole discretion.

9. **Audit.** Upon request by Buyer, Seller will provide Buyer or its authorized representatives copies of all of Seller's books, records and accounts, in any way related to (i) Seller's performance under this Contract (including Seller's processes and procedures), (ii) the Goods, or (iii) any payment or other transaction occurring in connection with this Contract, in each case, for the purpose of auditing Seller's compliance with the terms of this Contract, including Seller's charges for the Goods.

10. **Subcontracting; Approval.** Seller will not subcontract any of its obligations under this Contract without the prior written consent of Buyer. Any such consent of Buyer will not release Seller from, or limit any of, Seller's obligations, responsibilities, or warranties under this Contract. If Buyer approves a subcontractor, Seller warrants and guarantees that such subcontractor's performance will satisfy all requirements applicable to Seller under this Contract. Seller is solely responsible for all means, methods, techniques, sequences and procedures and for coordinating all portions of the work necessary to complete the Contract. Notwithstanding Buyer's approval of a subcontractor, Seller is solely responsible for all payments due to that subcontractor. The direction and supervision of Seller's and any permitted subcontractor employees rest exclusively with Seller or such subcontractor. Without limiting the foregoing, all raw materials and all suppliers of Seller are subject to Buyer's prior written consent. All storage areas for the Goods, raw materials and packaging materials are subject to Buyer's inspection and approval.

11. **Proprietary Rights.**

(a) **Ownership of Work Product; Assignment and Transfer.** Unless otherwise agreed in a signed writing by Buyer, all concepts, documents, reports, ideas, designs, drafts, models, patterns, packaging, samples and any other results produced in connection with Seller's performance of this Contract ("***Work Product***") is solely owned by Buyer. Work Product does not include concepts, documents, reports, ideas, designs, drafts, models, samples, patents, trademarks, trade names, recipes, formulae, packaging, copyrights and any other results or intellectual property rights produced by Seller prior to accepting the Contract or that Seller can prove by written documentation was produced by Seller without reference to Seller's obligations under this Contract. Seller agrees that all copyrightable materials of the Work Product will be deemed a "work made for hire" for the purposes of Title 17 of the United States Code, Section 101 et seq. In the event that (i) any of the Work Product may not be considered "work made for hire," or (ii) ownership of all right, title and interest to the legal rights in and to the Work Product, including, without limitation, all worldwide copyrights, industrial design rights, trademarks, patents or other intellectual property rights therein, does not vest automatically and exclusively in Buyer, then, without further consideration, Seller agrees to, and hereby does, irrevocably, assign, convey, and otherwise transfer to Buyer all such right, title and interest, in and to all Work Product and any derivative works thereof. In addition, Seller will not engage, participate or otherwise become involved in any activity or course of action that is not authorized by Buyer or diminishes or tarnishes the image and/or reputation of Buyer, its affiliates or any of Buyer's trademarks.

(b) **License.** To the extent the Goods incorporate any copyrights, industrial design rights, trademarks, trade secrets, patents or other intellectual property rights (collectively, "***Intellectual Property***") that is owned, invented, authored, licensed to, or developed by Seller and necessary for Buyer to sell the Goods to its customers, Seller hereby grants Buyer and its customers a nonexclusive, royalty-free, irrevocable, worldwide right and license to use such Intellectual Property, and to sell, offer for sale, export out of the United States, or import into the United States the Goods, for the sole purpose of fulfilling Buyer's requirements to its customers. The foregoing license does not permit Buyer to use Seller's Intellectual Property on a stand-alone basis and does not grant Buyer the right to separately exploit Seller's Intellectual Property.

12. **Confidentiality.** If a confidentiality agreement or non-disclosure agreement (the "***NDA***") exists between Buyer and Seller, the term of such NDA shall be and is hereby extended to be co-terminus with this Contract, and such NDA is incorporated herein by reference and shall govern the use and disclosure of any confidential or proprietary information exchanged between Buyer and Seller. If there is no NDA between Buyer and Seller covering this Contract, the following terms apply: all Intellectual

Property and all other confidential and proprietary information provided by Buyer to Seller under this Contract including, without limitation, any samples, drawings, know-how, processes, recipes, formulae, and any other technical, business, or financial information, whether provided orally, in writing, by demonstration, or otherwise (collectively, “**Confidential Information**”): (i) is owned by Buyer; (ii) must be kept confidential by Seller and may not be disclosed by Seller to third parties without the express prior written consent of Buyer; *provided, however*, Seller may disclose Buyer’s Confidential Information to Seller’s employees, attorneys, agents, and subcontractors who have a “need to know” the Confidential Information for purposes of carrying out Seller’s obligations under this Contract as long as such individual and entities are bound by confidentiality terms no less restrictive than those contained in this Contract; and (iii) may not be used by Seller other than is required for Seller to perform its obligations under this Contract. The confidentiality restrictions in this Section 12 do not apply to information which is (A) already known by Seller prior to the date of this Contract and without breach of the confidentiality restriction that Seller was subject; (B) acquired by Seller from a third party which was not, to the knowledge of Seller, under an obligation to Buyer not to disclose such information; (C) which is or becomes publicly available through no breach by Seller of confidentiality restrictions to which Seller is or was subject; or (D) independently developed by Seller without the use of Buyer’s Confidential Information. Notwithstanding the above, Seller may disclose Buyer’s Confidential Information if required by a judicial or government request, requirement, or order as long as (x) to the extent not prohibited by law, Seller gives Buyer written notice prior to such disclosure and (y) Seller only discloses that portion of Confidential Information required to comply with such requirement, request, or order. Upon the termination or expiration of this Contract, Seller agrees to return, or destroy (to the extent feasible), Buyer’s Confidential Information in Seller’s possession.

13. **Warranty.**

(a) **Seller Warranty.** In addition to any warranties implied by Law, Seller guarantees, warrants and covenants to Buyer, its customers, and their end users that all Goods shall: (i) strictly conform, in all respects, to the specifications, quality requirements and other standards provided by Buyer for the Goods, set forth in this Contract, or otherwise agreed to between Buyer and Seller; (ii) comply with, and will be manufactured, processed, tested, certified, weighed, packaged, wrapped, inspected, marked, sold, stored, tagged, shipped, labeled, and registered accurately in compliance with all Laws; (iii) be useable, merchantable and fit for their intended purpose and pass without objection in trade; (iv) be of good quality and workmanship; (v) be free from defects in design, materials and workmanship; (vi) comply with all applicable Laws and industry standards; (vii) be new and conveyed by Seller to Buyer with good title, free and clear of all liens, claims, and encumbrances; and (viii) not infringe upon, violate or misappropriate any intellectual property right of any third party.

(b) **Additional Food Warranties.** Without limiting the foregoing, if the Goods are food, will otherwise be incorporated into food products sold by Buyer or will otherwise be used for human consumption, Seller guarantees, warrants, and covenants to Buyer, its customers, and their end users that the Goods (i) are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, and regulations adopted under that legislation (the “**FD&C Act**”), or any state or foreign Laws, nor violate any disclosure or warnings required under food, health or other Laws; (ii) are not articles that are prohibited under the FD&C Act from being introduced into U.S. interstate commerce; (iii) will comply with and remain in compliance with the Food Safety Modernization Act and all of its implementing regulations (collectively, “**FSMA**”), and (iv) are otherwise in compliance with any Laws, regulations, or requirements overseen by, enforced by, or under the jurisdiction of the U.S. Food and Drug Administration (“**FDA**”). Without limiting the foregoing, Seller also represents and warrants to Buyer that Seller is not acting as an “exempt” business under the FSMA and that it will only utilize vendors and service providers that comply with the FSMA and do not claim exemptions (either complete or partial) even if they are or might be exempt based on the businesses’ size and/or sales within a local marketplace. Buyer shall not serve as the Foreign Seller Verification Program (“**FSVP**”) importer pursuant to 21 CFR §1.500, nor shall Buyer be declared by Seller or others as the FSVP importer in any entry documentation under any circumstances unless Buyer has expressly and explicitly notified Seller in writing that Buyer shall assume such FSVP and importing responsibilities. In the event of Buyer’s assumption of such responsibilities, Seller hereby agrees to cooperate with Buyer in facilitating compliance with Buyer’s FSVP obligations and other requirements under the FDCA, including but not limited to FSMA.

(c) **Warranty on Facility.** To the extent applicable, Seller guarantees, warrants and covenants to Buyer that Seller’s facility where the Goods are manufactured shall: (i) strictly comply with (A) all applicable Laws, (B) all of Buyer’s requirements, (C) all applicable requirements set forth by the U.S. Food and Drug Administration and the U.S. Department of Agriculture, (ii) have the capacity to manufacture and supply the Goods to Buyer in accordance with the quantities ordered by Buyer and Buyer’s specifications; and (iii) comply with and remain in compliance with the Global Food Safety Initiative (“**GFSI**”) requirements as set out in any GFSI benchmarked scheme. As applicable, an audit of the Seller’s facility and Seller must be performed every twelve (12) months and must include all facilities where the Goods or raw materials are manufactured. Audit results must be provided to Buyer on request.

(d) **Additional Warranty Terms and Rights Upon Breach of Warranty.** Seller agrees the warranties provided by Seller to Buyer under these Terms and Conditions (i) are in addition to all other warranties, express or implied, provided by Law; (ii) extend to the Goods’ future performance; (iii) survive Seller’s delivery of the Goods and Buyer’s receipt, inspection, testing, acceptance, use of the Goods and Buyer’s payment for the Goods; and (iv) may not be limited or disclaimed by Seller and (v) do not commence until the Goods are received by Buyer’s ultimate end-user (which may be Buyer’s customer or the end users of those customers). Buyer’s approval of Seller’s designs, recipes, formulae, materials, processes, specifications, subcontractors, or similar requirements will not be construed to relieve Seller of any warranties. The warranty period for Seller’s warranties under these Terms and Conditions begin upon delivery of the Goods by Seller to Buyer and continue for the longer of (x) the period provided by Law, (y) the warranty period required by Buyer’s customers for the products the Goods are incorporated into

(including any products supplied by Buyer) or (z) the shelf life of Buyer's products into which the Goods are incorporated. Any applicable statute of limitations on Buyer's claims for breach of warranty will commence no earlier than the date Buyer or its customer discovers the breach of the applicable warranty. In addition to any rights and remedies of Buyer specified in this Contract or available at Law, in the event of a breach of Seller's warranties, covenants or guarantees, Buyer shall have the right, at its option, to take the following actions: (i) retain the defective Goods in whole or in part with an appropriate adjustment in the price for the Goods; (ii) require Seller to immediately repair or replace the defective Goods in whole or in part at Seller's sole expense, including all shipping, transportation, and installation costs; (iii) correct or replace the defective Goods with similar items and recover the total cost relating thereto from Seller, including the cost of product recalls; or (iv) reject the defective Goods. For the avoidance of doubt, Seller is responsible for all costs and expenses related to fulfilling its warranty obligations hereunder.

(e) **No Buyer Warranty.** SELLER ACKNOWLEDGES THAT ANY SPECIFICATIONS, MATERIALS, STANDARDS, DRAWINGS, SAMPLES, DESCRIPTIONS, OR OTHER QUALITY REQUIREMENTS PROVIDED BY BUYER RELATING TO THE GOODS, AND ANY INTELLECTUAL PROPERTY ASSOCIATED THEREWITH, IS PROVIDED BY BUYER TO SELLER ON AN "AS IS, WHERE IS" BASIS, AND THAT BUYER MAKES NO REPRESENTATIONS, WARRANTIES OR COVENANTS WHATSOEVER WITH RESPECT THERETO, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR ANY OTHER WARRANTIES THAT MAY BE IMPLIED UNDER APPLICABLE LAW, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

14. **Information Security.** Seller represents that it currently follows industry best practices to prevent any compromise of its information systems, computer networks, or data files ("**Systems**") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Buyer. Seller shall immediately notify Buyer if the security of Seller's Systems is breached or compromised in any way. Seller shall apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and antivirus software; maintaining countermeasures, operating systems, and other applications with up to date virus definitions and security patches; installing and operating security mechanisms in the manner in which they were intended and sufficient to ensure the Buyer will not be impacted nor its operations disrupted; and permitting only authorized users access to computer systems and applications. Seller shall: (i) use up-to-date antivirus tools to remove known viruses and malware from any email message or data transmitted to Buyer; (ii) prevent the transmission of attacks on Buyer via the network connections between Buyer and the Seller; and (iii) prevent unauthorized access to Buyer systems via the Seller's networks and access codes. In accordance with all applicable US and international privacy Laws, Seller shall safeguard confidential protected individually identifiable personal information (health, financial, identity) which is received, transmitted, managed, processed, etc. and require its subcontractors or agents to meet the above security precautions.

15. **Recalls.** If the Goods are subject to removal from the stream of commerce or the subject of a corrective action plan or other remedial action initiated, whether voluntary or involuntary, by a government entity, Seller, or Buyer (a "**Recall**"), Seller shall be responsible for all costs associated with the Recall and, subject to Buyer's consent, all matters associated with the Recall, including but not limited to: (i) consumer notification and contact; (ii) all expenses and losses incurred by Buyer in connection with such Recall (and where applicable, any products with which the Goods have been packaged, consolidated or commingled), including but not limited to refunds to customers, lost profits, transportation costs, the costs of Buyer's overhead, systems expenses in processing any Recall, and all other costs associated therewith; and (iii) initial and subsequent contact and reporting of the Recall to any government agency having jurisdiction over the affected Goods that are the subject of the Recall. Seller shall promptly, and in no event later than twenty-four (24) hours after its decision to initiate a Recall or its receipt of a Recall notice from a government entity, inform Buyer of the Recall in writing. Seller shall promptly inform Buyer of its becoming aware of any defect in the Goods that could reasonably be expected to cause damage, illness, injury or death (whether to human, animals, or property), or the noncompliance of the Goods with any applicable safety or regulatory standard or Law, whether imposed by a government entity or by Buyer. If a government agency initiates any inquiry or investigation relating to the Goods, Seller shall notify Buyer immediately thereof and take reasonable steps to resolve the matter without exposing Buyer to any liability or risk. Seller shall maintain a written Recall procedure on file at Seller's facility and offices. Without limiting the foregoing, Seller shall cooperate and assist Buyer in all ways to resolve claims involving the Goods subject to Recall, correction, withdrawal, post-sale warning or mailing of information or safety notice.

16. **Compliance with Laws.** Seller will perform all of its obligations under this Contract in accordance with, and ensure the Goods and any related packaging conform fully to, any applicable statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any federal, state or local government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any arbitrator, court or tribunal of competent jurisdiction including, without limitation, the requirements of (as applicable) the FDA, the U.S. Department of Agriculture, the U.S. Environmental Protection Agency, the U.S. Consumer Products Safety Commission, the U.S. Federal Trade Commission, the U.S. Customs and Border Protection, the U.S. Treasury, and the U.S. Department of Labor regulations and any other law or requirement relating to data protection and privacy, wages, hours and conditions of employment, disclosure, subcontractor selection, discrimination, and occupational health/safety (collectively, "**Laws**"). Seller further represents and warrants that neither it nor any of its subcontractors will utilize child, slave, prisoner or any other form of forced or involuntary labor, or engage in abusive employment or corrupt business practices, in the supply of the Goods under this Contract. In addition, Seller agrees to comply with all applicable U.S. export control Laws including the requirement for obtaining any export license or agreement, if applicable (collectively, "**Export Controls**"). Without in any way limiting the

foregoing, Seller agrees that it will not transfer any Export Controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Seller or Seller's lower-tier suppliers, without authority of an export license, agreement or applicable exemption or exception. Seller shall provide prompt written notification to Buyer in the event of any violation or potential violation of the Export Controls, or the initiation or existence of a government investigation that could affect Buyer or Seller's performance under this Contract.

17. **Insurance**. Seller must carry and maintain, at its own expense, the following insurance coverage in reasonable amounts: workers compensation, comprehensive commercial general liability (including products/completed operations, contractual liability, person injury, and blanket contractual liability), and automobile liability. Seller will name Buyer as an additional insured under all such insurance policies. Seller shall use reasonable best efforts to ensure that each of Seller's insurance policy includes a waiver of subrogation by Seller on behalf of itself and the applicable insurance carrier in favor of Buyer. Seller shall also ensure that all subcontractors of Seller maintain adequate insurance having regard to the obligations they are contracted to fulfill. All insurance coverage shall be primary coverage to Buyer regardless of any other coverage Buyer receives or is entitled to receive. Seller and its subcontractors shall not cancel, allow to lapse, or reduce the foregoing insurance without Buyer's prior written consent. Upon request, Seller shall provide Buyer with certificate of insurances evidencing the required insurance coverages.

18. **Event of Default**. The following occurrences shall constitute events of default by Seller (each, an "***Event of Default***"): (i) Seller repudiates, breaches, or threatens to repudiate or breach any of the terms of this Contract or any of its obligations hereunder including, without limitation, Seller's warranties; (ii) Seller becomes insolvent or there is filing of a voluntary or involuntary petition in bankruptcy by or against Seller, or there is an appointment of a receiver or trustee for Seller, or there is an execution of an assignment for the benefit of Seller's creditors, provided that such petition, appointment or assignment is not vacated or nullified within thirty (30) days of such event; or (iii) Seller sells all or substantially all of its assets to, or experiences a change of control (whether directly or indirectly) to, an entity that is a competitor of Buyer. Upon the occurrence of an Event of Default, such occurrence shall not be deemed an Event of Default if Seller corrects such failure or cures such breach (to the extent correctable or curable) within a commercially reasonable time period (but in no case exceeding fifteen (15) days). All Events of Default will be deemed to occur on the date the specific event occurs and any written notice from Buyer describing an Event of Default is only provided to Seller as a courtesy and will not be deemed to start any cure period unless expressly set forth in the written notice from Buyer.

19. **Termination Rights**.

(a) **Termination**. In addition to any other rights or remedies of Buyer under this Contract or applicable Law, Buyer may terminate this Contract or a Purchase Order, in whole or in part (i) upon an Event of Default (subject to the provisions of Section 17) (a "***Termination for Cause***"), or (ii) at any time for any reason upon at-least thirty (30) days prior written notice to Seller (a "***Termination for Convenience***"). Buyer shall have the right to a Termination for Cause or a Termination for Convenience notwithstanding the existence of a Force Majeure event. The effective date of any termination will be on the date of Buyer's written notice of termination or such later date as set forth in the notice. In the event Buyer did not have a right to a Termination for Cause, Seller agrees any termination notice by Buyer to Seller will be deemed a Termination for Convenience. Buyer shall have no obligation to Seller, Seller's subcontractors, Seller's suppliers, or any other entity of any kind upon a Termination for Cause other than as set forth in Section 18(b). Notwithstanding anything contained herein, and in recognition of Buyer's commitments to its customers are made in reliance of Seller's commitments under this Contract, Seller has no right to terminate this Contract or any Purchase Order.

(b) **Obligations on Termination**. Upon any expiration or termination of this Contract (i) Seller will immediately return and deliver to Buyer (A) all drawings, designs and all other documents provided by Buyer, and (B) any property of Buyer or Buyer's customer including, without limitation, all raw materials, packaging, and dunnage, (ii) Buyer shall have the right to inspect Seller's premises to confirm that Seller has returned all such materials to Buyer, (iii) Seller agrees to take all actions as may be required (and requested) and consistent with industry standard transition assistance to transition the Goods from Seller to a successor supplier or Buyer, and (iv) subject to these Terms and Conditions, Buyer will (x) pay Seller any undisputed amounts for conforming Goods that have been delivered to Buyer as of the date of termination and (y) purchase all outstanding amounts of raw materials, packaging materials, and such other materials purchased exclusively for Buyer (consistent with the Forecast or those levels approved by Buyer) at the actual documented cost paid by Seller. Notwithstanding the foregoing, payments made under this Section will not exceed the purchase price that otherwise would have been payable by Buyer for either (1) finished Goods that would have been produced by Seller under this Contract on the date of termination pursuant to an outstanding Purchase Order or (2) raw material, packaging materials, and such other materials purchased exclusively for Buyer and expressly authorized by Buyer in writing. Buyer will not be liable, and will not be required to make payments to Seller (whether arising for a Termination for Convenience, Termination for Cause, or otherwise) directly or indirectly, on account of claims by Seller's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, general and administrative burden charges, or any other charges from termination of this Contract or otherwise. Upon termination or expiration of this Contract for any reason, each and every section or provision that by its terms should survive and remain valid in this Contract (including these Terms and Conditions) shall survive and remain valid after the expiration or termination of this Contract.

20. **Force Majeure**. Any delay or failure of either party to perform its obligations under this Contract will be excused to the extent that the delay or failure was caused by an event beyond such party's control, without such party's fault or negligence and that by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (which events

may include natural disasters, acts of God, acts of a governmental entity, embargoes, explosions, riots, wars, acts of terrorism, fires, floods, epidemics, pandemics, quarantine restrictions, or freight embargoes (each, a “*Force Majeure*”). Notwithstanding anything in this Section 19 to the contrary, (i) labor problems of Seller or its subcontractors, including, without limitation, lockouts, strikes and slowdowns, (ii) the inability of Seller or its subcontractors to obtain power, materials, labor, equipment or transportation, (iii) Seller’s or its subcontractor’s financial inability to perform, (iv) changes in the cost or availability of materials, components, services, or market conditions, and (v) Seller actions or contract disputes with subcontractors are not, in each case, a Force Majeure and will not, in each case, excuse performance by Seller under this Contract or otherwise excuse performance by Seller on theories of force majeure, commercial impracticability, or otherwise, and Seller expressly assumes these risks. Seller must give Buyer prompt notice of any event or circumstance that is reasonably likely to result in a Force Majeure and the anticipated duration of such Force Majeure. Seller must use all diligent efforts to end the Force Majeure, ensure that the effects of any Force Majeure are minimized, and resume full performance under this Contract. During any Force Majeure, Buyer may, at its option (x) purchase the Goods from other sources and reduce the quantities (and any corresponding payment) set forth in a Purchase Order without liability to Seller or (y) have Seller provide the Goods from other sources at the price set forth in this Contract. If requested by Buyer, Seller will, within five (5) days of such request, provide adequate assurances that the delay will not exceed thirty (30) days. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance (within a commercially reasonable time not to exceed ten (10) days from the date of the request) that the delay will cease within thirty (30) days, Buyer may immediately cancel this Contract (or the applicable Purchase Order) without liability to Seller of any kind or nature.

21. **Indemnification.** In addition to any other indemnification set forth in this Contract, Seller will indemnify, defend, hold harmless Buyer, its directors, officers, shareholders, members, employees, attorneys, agents, representatives, parents, affiliates, subsidiaries, customers, and their users (each an “*Indemnified Party*”) for, from, and against any and all claims, costs, demands, losses, damages, liabilities, judgments, fines, penalties, assessments, and expenses (including reasonable attorneys’ fees) incurred by the Indemnified Parties or brought by any third party against an Indemnified Party arising out of, incidental to, or resulting from Seller’s performance of this Contract including (a) any negligent or willful act or omission of Seller or its respective subcontractors, agents, employees or other representatives; (b) Seller’s, its subcontractors’, agents’, employees’ or representatives’ commission of any Event of Default or other breach of any provision of this Contract (including, without limitation, Seller’s warranties or any Recalls); (c) Seller’s, its subcontractors’, agents’, employees’ or representatives’ violation of any Law; (d) any injury, illness, or death of any person or damage to property as a result of the delivery, sale, resale, labeling, use, or consumption the Goods; (e) any seizure, detention or destruction of any Goods, whether under the authority of any governmental authority, court order, or with the commercially reasonable approval of Buyer or Buyer’s customer; or (f) any Recall, if applicable. Without limiting the foregoing, Buyer shall have the right, at Seller’s expense, to select and retain counsel of its choosing in defense of the foregoing and to enter in any settlement or compromise related to the foregoing.

22. **Remedies.** The rights and remedies reserved to Buyer in this Contract shall be cumulative, and in addition to all other or further remedies provided at Law. Without limiting any rights or remedies of Buyer under this Contract or at Law, in the event that Seller fails or refuses to deliver Goods, or otherwise repudiates any provision of this Contract, Seller agrees that Buyer may seek specific performance of Seller’s obligations under this Contract (including permanent or temporary injunctive relief) without the need to post a bond or any other type of security. In the event this Contract is issued or renewed after Seller becomes a debtor in bankruptcy, Buyer shall be entitled to all of its attorney’s or other professional fees arising from or relating to the bankruptcy case, including for monitoring the case.

23. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL BUYER BE LIABLE TO SELLER OR ANY OTHER THIRD PARTY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT THIS CONTRACT OR OTHERWISE RELATING TO THE GOODS, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR PROPERTY DAMAGES, ATTORNEY’S FEES OR ANY OTHER RELATED COSTS OR EXPENSES, ANY DIRECT OR INDIRECT LOSS OF PROFITS, REVENUE, OR BUSINESS OPPORTUNITY, DOWNTIME, DELAY DAMAGES OR ANY OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE BY BUYER OR BUYER WAS ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

24. **CONSULTATION WITH COUNSEL.** BUYER AND SELLER ACKNOWLEDGE THAT THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH COUNSEL OF THEIR CHOICE BEFORE ENTERING INTO THIS CONTRACT AND ARE DOING SO WITHOUT DURESS, INTIMIDATION, OR COERCION AND WITHOUT RELIANCE UPON ANY REPRESENTATIONS, WARRANTIES, OR COMMITMENTS OTHER THAN THOSE REPRESENTATIONS, WARRANTIES, OR COMMITMENTS SET FORTH IN THIS CONTRACT.

25. **No Advertising; Customer Communications.** Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise or publish the fact that Seller has contracted to furnish Buyer the Goods or use any trademarks or trade names of Buyer in Seller’s advertising or promotional materials. Seller may not make direct contact with Buyer’s customers with respect to the subject matter of this Contract unless specifically directed to by Buyer or where Seller has obtained Buyer’s written permission prior to any contact. In the event Buyer’s customer contacts Seller directly, Seller is to immediately notify Buyer and disclose the content of the communication

26. **General Terms.** This Contract: (a) supersedes all prior or contemporaneous oral or written understandings, representations and agreements between the parties and represents the entire agreement between the parties with respect to the

subject matter thereof; (b) is solely for the benefit of Buyer and Seller and no other third parties; and (c) may not be assigned or transferred by Seller (by operation of law or otherwise) without Buyer's prior written consent. Any purported transfer or assignment in violation of the foregoing will be null and void. Seller and Buyer are independent contracting parties and nothing in this Contract will make either party the agent or legal representative of the other for any purpose, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. If any clause in this Contract is determined by a court of competent jurisdiction to be invalid, the invalidity of such clause shall not affect the validity of the remainder of this Contract. Any waiver of any provision of this Contract must be made in writing and any waiver of one provision on one occasion shall not be deemed a waiver on another occasion or with respect to another transaction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract. This Contract (including these Terms and Conditions) and any other agreements between the parties will be governed by and construed in accordance with the laws of the State of Illinois, without regard to the choice of law provisions. The parties each irrevocably and unconditionally agree that the sole and exclusive forum and venue for any legal or equitable action or proceeding arising out of or in connection with this Contract will lie in the United States District Court for the Northern District of Illinois, the courts in the State of Illinois, and any appellate court with jurisdiction over such courts. Each party hereby irrevocably and unconditionally submits to the sole and exclusive personal jurisdiction of such courts and Seller agrees not to bring any action, litigation, or proceeding in any other court.

*****End of 37th Street Bakery, LLC Terms and Conditions of Purchase*****