

TERMS AND CONDITIONS OF PURCHASE

1. **Engagement:** These Vendor Terms and Conditions (“T&Cs”) shall apply to purchases of Deliverables by Interbake from the Supplier pursuant to an Order. These T&Cs are hereby incorporated into any Order issued to the Supplier. The Supplier hereby agrees that any terms in an Order are in conflict with or otherwise not consistent with the T&Cs shall be deemed void and not applicable to the purchase of Deliverables by Interbake. For purposes of these T&Cs (a) “**Interbake**” shall mean Interbake Canada Inc. and/or Interbake Foods LLC and/or any of its subsidiary companies; (b) “**Supplier**” shall mean the party identified on an Order who sells or provides Deliverables to Interbake; (c) “**Deliverables**” means any goods, materials and/or services provided to Interbake by the Supplier pursuant to an Order; and (d) “**Order**” means any purchase order or document ordering Deliverables from the Supplier which reference or link to these T&Cs.

2. **Ownership:** Title to, and risk of loss for any item provided to Interbake as part of the Deliverables shall transfer to Interbake once delivered to Interbake (and installed, if applicable), in accordance with these T&Cs, unless rejected by Interbake.

3. **Fees:**

- (a) In consideration for the provision of the Deliverables, Interbake shall pay to the Supplier the fees set out in the Order (the “**Fees**”).
- (b) Unless otherwise indicated on the Order, the Fees shall be fixed and are inclusive of all applicable freight, duty and taxes. The Supplier shall not be entitled to any prepayment for the Deliverables and the Fees shall be paid to the Supplier within sixty (60) days following receipt by Interbake of a correct and complete invoice. The Supplier shall not issue an invoice for any Deliverables which have not been accepted by Interbake. Interbake may deduct, set-off or apply all or part of any payment obligations owing by the Supplier to Interbake against any sums due to the Supplier from Interbake or its subsidiaries.

4. **No Minimum Purchase:** Unless otherwise expressly otherwise stated in the Order, nothing obligates Interbake to purchase any minimum level of Deliverables from the Supplier.

5. **Applicable Laws:** The Supplier shall at all times comply with all Applicable Laws. For purposes of these T&Cs, “**Applicable Laws**” means any federal, provincial, state, territorial and municipal laws and all applicable regulations, by-laws, ordinances, codes, standards, rules, orders and practices, including any policies and guidelines issued by Interbake, which are in any way applicable to the Deliverables, including Interbake’s [Food Safety Program Schedule](#), and other health, safety and environmental rules. For Products that are food related products, including the contents, packaging, and labeling, Applicable Laws shall also include but not be limited to the Federal Food, Drug, and Cosmetic Act of 1938, the Canadian Food and Drugs Act and its Regulations, the Fair Packaging and Labeling Act, the Consumer Packaging and Labelling Act, and the Food Safety Modernization Act, as applicable. In addition, the Supplier shall obtain workers’ compensation and workplace safety clearances and certificates for all of its employees and agents engaged in the provision of Deliverables at no cost to Interbake and shall furnish copies of such certificates to Interbake upon request for review.

6. **Delivery:** If the Deliverables include the shipment of any items:

- (a) The Supplier shall suitably pack, mark and ship such items in accordance with the specific instructions provided by Interbake (and Applicable Laws and industry standards) and the Supplier shall assure delivery free of loss, damage and deterioration to the delivery point specified by Interbake on the delivery date or within the period specified by Interbake. The Supplier shall promptly notify Interbake of any circumstance known or suspected that may cause a delay in the delivery of the items. The Order number must appear on the container, the packing list, invoice and correspondence relating to such Order, as applicable;
- (b) Interbake and its authorized representatives shall have the right, but not the obligation, to inspect the Deliverables at times and

places designated by Interbake before, during or after delivery or performance. The Deliverables shall be subject to final inspection by Interbake or its authorized representatives and acceptance at the final destination specified. Interbake’s making of or failure to make an inspection, examination or test of, or payment for, or Interbake’s acceptance of, any Deliverables shall in no way relieve the Supplier from its obligation to conform to all of the requirements of these T&Cs and shall in no way impair Interbake’s right to reject or revoke acceptance of any nonconforming Deliverables, or to avail itself of any other remedies to which Interbake may be entitled, notwithstanding Interbake’s knowledge of any nonconformity, its substantiality or the ease of its discovery. Interbake reserves the right to review Supplier’s quality assurance and quality control procedures; and

- (c) Any aspect of the Deliverables not fully conforming to the terms of these T&Cs, Order, any specifications, instructions, drawings or data submitted to the Supplier (or industry standards if no specifications are given) or violating any Applicable Law, may be refused or rejected by Interbake and returned or held at the Supplier’s expense and risk. Interbake may charge to the Supplier all expenses of inspecting, unpacking, examining, repacking, storing, and reshipping any items rejected for the reasons noted herein. The remedies hereinabove afforded Interbake shall not be exclusive, and Interbake may hold Supplier liable for any and all damages arising from any breach or default set forth herein.

7. **Recall:** If all or any part of the Deliverables is the subject of any order or requirement pursuant to any Applicable Laws requiring either Interbake or the Supplier to recall, replace, repair or otherwise take back all or any part of the Deliverables, or if Interbake or the Supplier reasonably determines that it is necessary to affect a voluntary recall (in either case, a “**Recall**”) prior to any such order or requirement, the Supplier shall be responsible for all costs, expenses and other losses (including lost profits) associated with or resulting from any such action, including, but not limited to, any transportation and/or destruction of the portion of the Deliverables subject to the Recall and all cost of the recalled Deliverables. The Supplier shall fully cooperate with Interbake in Interbake’s implementation of any Recall of Deliverables and shall provide all quality and production data reasonably requested by Interbake with respect to recalled Deliverables within 24 hours of Interbake’s request.

8. **Representations and Warranties:** The Supplier represents and warrants, as applicable, that:

- (a) it shall provide, operate and manage the Deliverables in a professional, competent and commercially prudent manner by an adequate number of appropriately trained, skilled and qualified personnel;
- (b) it has the necessary resources and qualifications, including knowledge, skill and experience to provide the Deliverables;
- (c) if applicable, the Deliverables shall be in good working order, free of material defects and handled, stored, shipped and utilized in a competent manner and in accordance with safe and sanitary industry practices and standards;
- (d) the Deliverables shall (i) be new and free from defects in design, manufacture, materials and workmanship; (ii) be of merchantable quality, in good operating condition, fit and suitable for the purpose intended by Interbake; and (iii) be free and clear of any security interests, claims, charges, encumbrances, or liabilities and that Supplier has good and marketable title to all Deliverables;
- (e) it shall provide the Deliverables in accordance with all Applicable Laws and the Order and these T&Cs do not breach any other agreement to which the Supplier may be subject to;

- (f) it shall obtain and maintain all licenses, permits, certifications and regulatory approvals necessary for the provision of the Deliverables;
- (g) no part of the Deliverables will infringe or otherwise violate any patent, copyright, trade-mark, trade secret or other intellectual property or other proprietary rights of any person;
- (h) the Deliverables will conform to specifications and descriptions as set forth in the Order and/or any documentation published or made available to the Supplier in relation to the Deliverables; and
- (i) in the event any information or reports are provided by the Supplier to Interbake as part of the Deliverables, such information or reports shall be complete and accurate in all material respects.

9. **Independent Contractor and Employees:** This is an agreement between separate legal entities and neither is the agent or employee of the other for any purpose whatsoever. The Parties do not intend to create a partnership or joint venture between themselves. Neither Interbake nor the Supplier (each a “Party” and collectively “Parties”) shall have the right to bind the other to any agreement or to incur any obligation or liability on behalf of the other Party.

10. **Records and Audit:** For a period for two (2) years following provision of the Deliverables to Interbake, the Supplier shall maintain all books and records associated with the Order and the Deliverables.

11. **Intellectual Property:**

- (a) The Supplier acknowledges that all trade-marks, logos, trade names, business names or other proprietary designations, artwork, designs, copy, inventions, ideas, concepts, techniques and all other intellectual property associated with the Deliverables (collectively the “Intellectual Property”) are and shall remain the sole and exclusive property of Interbake, and, unless otherwise agreed upon by the Parties in writing, the Supplier does not acquire any interest in any Intellectual Property associated with the Deliverables.
- (b) The Supplier agrees not to dispute, interfere with or contest, for any reason, directly or indirectly, the validity, ownership, goodwill, reputation or enforceability of any of the Intellectual Property nor directly or indirectly attempt to dilute the value of the goodwill attached to the Intellectual Property nor counsel, procure or assist anyone else to do any of the foregoing.
- (c) The Supplier shall not, without the prior written consent of Interbake: (i) use any Intellectual Property, either directly or indirectly, for any purpose other than providing the Deliverables to Interbake as reasonably required; or (ii) issue any news release, advertisement or public communication which mentions Interbake, its affiliates, their activities, the relationship with the Supplier and/or the Order and these T&Cs.
- (d) Any invention, formula, design, or other discovery made, created, or developed by the Supplier which is in any way associated with the Deliverables (each a “Development”) shall be immediately disclosed by the Supplier to, and shall be the exclusive property of, Interbake. The Supplier shall do all things reasonably necessary to assign all right, title and interest in and to the Deliverables to Interbake and assist Interbake to obtain, in Interbake’s name, anywhere in the world the relevant patent, copyright or other proprietary rights to same. The Supplier waives all moral rights in connection with the Deliverables. The Supplier agrees to obtain assignments of intellectual property in any Development and waivers of moral rights from its employees and independent subcontractors necessary to transfer to Interbake (or waive in respect of moral rights) all rights, title and interests, of every kind and character that such individuals may have in the Deliverables.
- (e) In the event of any alleged or actual infringement or contributory infringement (each an “Infringement”) of any patent, trademark, copyright or other proprietary interest by reason of the manufacture, delivery, license, use or sale of any Deliverables, the Supplier shall, at Supplier’s sole expense, obtain for Interbake a perpetual, royalty-free license with respect to the any Infringement, or shall replace or modify any Deliverables affected by an Infringement in a manner satisfactory to Interbake, so as to avoid the Infringement without any degradation in the performance of the Deliverables. The Supplier’s obligation shall apply even if Interbake

Foods furnishes a portion of the design or specifications for the affected Deliverables.

12. **Indemnification and Limitation of Liability:** The Supplier agrees to defend, indemnify, and hold harmless Interbake, its subsidiaries and each of their respective directors, officers, employees, subcontractors and other representatives from and against any and all claims, actions, demands, complaints, legal proceedings, losses, liabilities, damages, judgments, settlements, fines, penalties, reasonable legal fees and any other costs or expenses (including lost revenue, lost profits, special, incidental, indirect, consequential and punitive damages) arising out of or in connection with any alleged or actual act, omission or breach by the Supplier (except to the extent caused solely by a negligent act or omission by Interbake).

13. **Insurance:** The Supplier shall obtain and maintain the following insurance:

- (a) Commercial General Liability Insurance with limits for bodily injury and property damage liability of not less than ten million dollars (\$10,000,000) each occurrence, including personal injury, products/completed operations coverage, premises/operations liability, independent contractors liability, and broad form contractual liability specifically in support of, but not limited to, the indemnity provisions set forth herein. The foregoing policy shall:
 - (i) include a waiver of subrogation in favour of Interbake; (ii) be endorsed to include Interbake as an additional insured; and
 - (iii) contain cross-liability and severability of interest coverage.
- (b) Commercial Crime (Employee Dishonesty) Insurance in the amount of not less than two million dollars (\$2,000,000) per occurrence, including blanket coverage for theft of, or loss or damage to, any property and/or funds of others, including Interbake and its subsidiaries arising out of or in connection with fraudulent or dishonest acts committed by Supplier’s employees, the Supplier’s subcontractors and/or other representatives, acting alone or in collusion with others, including third party extension.
- (c) Errors and Omissions Liability Insurance in the amount of two million dollars (\$2,000,000) per claim covering all professional liability.
- (d) Automobile Liability Insurance (if applicable) for all vehicles owned or operated by the Supplier used in the provision of the Deliverables in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury or property damage.
- (e) Worker’s Compensation Insurance as required under Applicable Laws.
- (f) All policies providing coverage shall specify that it is primary coverage and not contributory with or in excess of any other insurance that may be maintained by Interbake and contain provisions that no cancellation, non-renewal or material changes in the policy shall become effective, except on thirty (30) days’ prior written notice to Interbake. Upon request, the Supplier shall furnish to Interbake a Certificate of Insurance evidencing the coverage required hereunder.

14. **Termination:**

- (a) Without cause: Interbake may terminate the Order, in whole or in part, at any time without cause upon providing thirty (30) days’ prior written notice to the Supplier.
- (b) For cause: Either Party may terminate the Order for cause in the event of a breach by the other Party if such breach is not cured within ten (10) days following written notice to the breaching Party advising of such breach.
- (c) Immediate termination: Either Party may immediately terminate the Order by giving written notice to the other Party if: (i) the other Party becomes insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction; (ii) the other Party makes an assignment for the benefit of its creditors; or (iii) a

receiver, trustee or similar agent is appointed with respect to any property or business of the other Party.

15. **Force Majeure:** Neither Party will hold the other Party liable for failure to comply with any term of the T&Cs or Order where failure to comply has been caused by an event or conditions beyond the reasonable control of the affected Party (each a “**Force Majeure Event**”). A Force Majeure Event may include an act of God, force of nature, fire or other casualty, expropriations, war like activity, insurrection, civil commotion or other similar act, but expressly excluding labour unrest or strikes by Supplier’s employees, subcontractors and/or other representatives. In the event of the occurrence of a Force Majeure Event, the affected Party shall notify the non-affected Party promptly upon the occurrence of same and describe in reasonable detail the circumstances causing the Force Majeure Event. The affected Party must immediately commence all reasonable efforts to mitigate the Force Majeure Event.

16. **Confidentiality:**

- (a) “**Confidential Information**” shall mean information received by one Party (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) that is proprietary to the Disclosing Party, not generally known in the applicable industry, would reasonably be considered confidential to the Disclosing Party, would do the Disclosing Party harm if divulged or that is marked, disclosed as or advised as being “confidential” or “proprietary” by the Disclosing Party, including the terms of the Order and these T&Cs.
- (b) The Receiving Party shall keep strictly confidential all Confidential Information and prevent the unauthorized use or disclosure of all Confidential Information. The Receiving Party shall not use any Confidential Information for any purpose other than to provide the Deliverables. In no event will the Receiving Party use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorized use or disclosure of any Confidential Information.
- (c) Exceptions: Notwithstanding the foregoing, the Receiving Party shall not be liable for use or disclosure of any Confidential Information that: (i) was already published or otherwise in the public domain through authorized disclosure at the time it is disclosed by the Disclosing Party to the Receiving Party; (ii) was already available or known to the Receiving Party (as established by the Receiving Party’s records) at the time it is disclosed to the Receiving Party by the Disclosing Party; (iii) is independently developed by the Receiving Party without reference to information disclosed by the Disclosing Party, provided such development can be adequately substantiated by the Receiving Party’s records; or (iv) is disclosed by the Receiving Party in response to an order of a court or other governmental authority provided that the Receiving Party provides the Disclosing Party prompt notice of any such order so that the Disclosing Party may seek a protective order or applicable relief.
- (d) **Need-To-Know Basis:** Each Party shall only make available the Confidential Information to its employees and agents on a need-to-know basis and shall advise such employees and agents of the restrictions set forth herein with respect to the use of such Confidential Information. The Receiving Party shall be responsible for the unauthorized disclosure of any Confidential Information by its employees and agents.

(e) The Receiving Party acknowledges that a breach or threatened breach by the Receiving Party of any of the provisions in this Section would cause the Disclosing Party irreparable harm not compensable in damages alone and that in such instance the Disclosing Party maybe entitled to seek and obtain, in a summary manner, interim, interlocutory and permanent injunctive relief without showing irreparable harm, specific performance and other equitable remedies.

17. **Dispute Resolution:** Any dispute, controversy or claim (collectively, “**Dispute**”) arising in connection with the Deliverables, the Order or these T&Cs shall be settled by good faith negotiation between the Parties. If a Dispute is not resolved within thirty (30) days from delivery of a request to negotiate, Interbake shall be entitled, but not obligated, to refer the Dispute to mediation or binding arbitration, at its discretion. If Interbake issues a notice of mediation or arbitration, the Supplier hereby consents to the submission of the Dispute to the mediator or arbitrator.

18. **Assignment and Subcontracting:** The Supplier may not assign or transfer the Order and these T&Cs or any part thereof, to any third party, without the prior written consent of Interbake, which consent may be withheld at Interbake’s sole discretion. Interbake may assign or transfer the Order and these T&Cs or any part thereof, to any of its assigns, subsidiaries, successors or other entity provided Interbake gives prior written notice to the Supplier. The Supplier hereby agrees to extend the same terms and conditions of the Order and these T&Cs to any subsidiary and/or parent company of Interbake. The Supplier shall not subcontract all or part of the Deliverables to any third party unless it obtains the prior written consent of Interbake which such consent may be unreasonably withheld.

19. **Notices:** Any notice required pursuant to these T&Cs must be in writing in English and delivered in person, sent by registered mail, return receipt requested, postage prepaid or sent by email, to the address and individual indicated on the Order. All such notices shall be effective on the date received.

20. **Governing Law and Jurisdiction:** For an Order issued in the United States, the laws of the State of Indiana and the applicable laws of the United States shall govern the Order and these T&Cs. For an Order issued in Canada, the laws of the Province of Ontario and the applicable laws of Canada shall govern the Order and these T&Cs.

21. **Conflicts:** In the event of a conflict or inconsistency in any provisions in these T&Cs, the Order, or any other document issued by either Party, such conflict or inconsistency shall be resolved in the following order or priority: (a) these T&Cs; (b) the Order; (c) any document issued by Interbake; and (d) any document issued by the Supplier.

22. **Severability:** Any provision in the Order or these T&Cs that is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent of such prohibition or unenforceability and severed from the balance of the Order or T&Cs, as applicable, all without affecting the remaining provisions or affecting the validity or enforceability of such provisions in any other jurisdiction.

23. **Entire Agreement and Waiver:** The Order and these T&Cs constitute the entire agreement between the Parties with respect to the provision of the Deliverables, and supersedes all other written or oral understandings or agreements between the Parties with respect to the provision of the Deliverables. No variation or modification of the Order or these T&Cs shall be valid unless an amendment in writing is signed by a duly authorized officer of each Party.

[END OF PURCHASE ORDER TERMS AND CONDITIONS]