

## TERMS AND CONDITIONS OF SALE

1. Application of Conditions; Express Rejection of Other Terms. These Terms and Conditions of Sale (“Terms”) shall apply to purchases of Products by the Customer from WF. These T&Cs are hereby incorporated into an Order issued to WF or an applicable customer agreement that references these Terms (the “Agreement”). The Customer hereby agrees that any terms in an Order that are in conflict with or otherwise not consistent with the Terms shall be deemed void and not applicable to the purchase of Products by the Customer. For the purposes of these Terms: (a) “WF” shall mean WF Bakery Inc. and/or Weston Foods US, LLC and/or any of its subsidiary companies; (b) “Customer” shall mean the party identified on an Order or in an Agreement who purchases Product from Weston; (c) “Goods” means any product or products identified in an Order purchased by the Customer from WF (d) “Order” means any purchase order or deliverable ordering Deliverables from WF which references or links to these Terms; (e) the “Parties” mean WF and the Customer and each, a “Party”.

2. Purchase Orders. In order to place orders for Goods, Customer shall from time to time issue Purchase Orders (“PO”) for the provision of Goods by WF. Each PO is deemed to include these Terms and, once accepted, all POs shall form part of the Agreement and together shall exclusively govern the purchase of Goods. Unless otherwise agreed to by the Parties, each PO shall be accepted by WF (a) upon execution or confirmation of acceptance by WF; or (b) through the provision by WF of Goods as requested by such PO. Each PO and each delivery, while governed by and subject to these Terms, shall stand as a separate transaction and shall have no consequences for other deliveries unless otherwise agreed to by the Parties. Purchase Orders for Goods cannot be cancelled or modified by Customer after acceptance except with the express written consent of Weston.

3. Price and Payment. Unless otherwise agreed by the Parties in writing, prices of the Goods are set forth in the POs or the Agreement and shall be inclusive of loading, freight, carriage, and insurance. Unless otherwise agreed by the Parties in writing, Weston’s shall have the right to adjust prices at its sole discretion, including without limitation, to reflect changes in the product component, packaging, manufacturing and shipping costs associated with the manufacturing, packaging and delivery of the Goods, as applicable. The prices for the Goods do not include any costs for duties or taxes, the amount of which shall be added to each invoice or separately invoiced by WF to Customer. Unless otherwise agreed to by the Parties in writing, payment terms shall be net thirty (30) days from invoice.

4. Set-off. In no event is Customer authorized to deduct any amounts from the amounts owed WF unless specifically authorized in writing by WF.

5. Specifications: Inspection and Acceptance. WF warrants that the Goods shall comply with the specification or description referred to in the applicable Agreement. On delivery and sale of the Goods, Customer shall have the right to inspect the Goods and satisfy itself that the Goods meet specifications. A determination by Customer that the Goods do not conform to the agreed specifications or in the event of shortage in delivery, partial loss, or damage to the Goods shall be delivered in writing to WF within seven (7) days from the date of delivery. In no event shall any Goods be returned, reworked, scrapped, resold, or donated by Customer without express written authorization of WF.

6. Delisting. WF may, at its sole discretion, elect to no longer produce (“Delist”) one or more of the Goods listed in a PO, an Agreement, or other schedule or appendix. In such event, WF shall provide Customer with no less than 90 days written notice prior to such Delist. The Parties agree to use good faith commercial efforts to substitute alternative Goods for any such Goods subject to Delist.

7. Delivery; Title and Risk of Loss. Customer will work with WF to arrange transportation of any Goods to Customer’s designated locations by Customer’s designated carriers, the cost of which shall be borne by Customer. Should WF agree to delivery of any Goods to Customer’s designated locations at the request of Customer using its own carriers, all costs of the delivery will continue to be borne by Customer. Delivery of Product shall be F.O.B. WF’s facility. Risk of loss or destruction shall be with WF until Product is picked up by Customer’s carrier, and thereafter, title and risk of loss shall pass to Customer.

8. Insurance. At all times during the fulfillment of WF’s obligations under these Terms or an Agreement, WF shall maintain the following insurance:

- a. Commercial General Liability Insurance with limits for bodily injury and property damage liability of not less than five million dollars (\$5,000,000) per 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 in these Terms. The foregoing policy shall be endorsed to include Supplier as an additional insured.
- b. Worker’s Compensation Insurance as required under applicable laws.

Upon request, but only after the acceptance of these Terms or execution of a duly executed Agreement between the Parties, WF shall furnish to Customer a certificate of insurance evidencing the coverage hereunder. Any additional insurance coverage or increase in Weston’s insurance limits as requested by Customer shall not be effective without WF’s written confirmation thereof. In such event, Customer acknowledges and agrees that WF’s base prices may be increased to accommodate such requests for additional insurance.

9. Recall. In the event any Goods may be harmful to the public, are in violation of any applicable laws or are subject to any recall (a “Recall”), the Parties shall immediately take all actions necessary to recall, withdraw, correct or destroy, as appropriate, the affected Goods in accordance with WF’s directions and/or as ordered or recommended by governmental authorities. Either Party shall, as promptly as possible, notify the other Party in writing of any situation or circumstance which could result in a Recall or seizure of Goods. Upon receipt of such notification, WF shall immediately suspend distribution of any such Goods until further notice from Customer. The Parties shall cooperate fully in implementing any Recall of Goods, including without limitation, assisting WF in determining the scope and cause of the problem and the location of Weston’s shipments of affected Goods, and providing assistance to WF in communicating and responding to government authorities. To the extent permitted by applicable laws, Customer shall not make any communications to a government authority or to the public without the prior approval of WF. Unless the nonconformity or defect in the Goods subject to Recall or seizure is not attributable to any act or

## TERMS AND CONDITIONS OF SALE

omission on the part of WF, WF shall be solely responsible for and bear all costs associated therewith and shall reimburse Customer upon demand for all losses, damages, documented costs and expenses incurred by Customer in connection with the Recall or seizure of such affected Goods including all replacement costs for such Goods, all amounts paid by Customer for such Goods, and Customer's cost of supplies purchased in relation to the Goods (if any) furnished by WF to Customer and incorporated into such Goods.

10. **Confidentiality:** For purposes of the Agreement, "Confidential Information" means 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 Agreement. The Receiving Party shall not use any Confidential Information for any purpose other than to perform its obligations pursuant to the Agreement and shall keep all Confidential Information strictly confidential. 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. 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. The Receiving Party shall not be liable for use or disclosure of any Confidential Information the extent (i) such disclosure required by law, (ii) the Confidential Information becomes part of the public domain through no fault of the Receiving Party; or (iii) the Confidential Information was already available or known to the Receiving Party (as established by the Receiving Party's records) at the time it is disclosed by the Disclosing Party to the Receiving Party. If the Receiving Party is ordered by a court of competent jurisdiction to disclose Confidential Information to a third party, it shall provide the Disclosing Party as much advance notice as possible so as to permit the Disclosing Party to take appropriate steps, at the Disclosing Party's expense, to prohibit, control or limit the proposed disclosure of the Confidential Information. 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. The Receiving Party further acknowledges that it is essential to the effective enforcement of the Agreement that in addition to any other remedies to which the Disclosing Party may be entitled, the Disclosing Party be 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.

11. **Force Majeure.** Neither Party will hold the other Party liable for failure to comply with any term of the Agreement 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 labor unrest or strikes by Customer'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. During the Force Majeure Event the non-affected Party may seek to have its needs, which would otherwise be met under these Conditions, met by others without liability to the non-affected Party. The affected Party must immediately commence all reasonable efforts to mitigate the Force Majeure Event.

12. **Limited Warranty.** Goods are sold subject to WF's Continuing Letter of Guarantee. If and to the extent Customer discovers the Goods fail to conform to the terms of such guaranty, Customer shall promptly notify WF, and WF shall, at its own option and within a reasonable time, either (i) repair or replace the Goods at no charge to Customer or (ii) reimburse Customer by means of a refund or credit for the purchase price of the Goods. The foregoing remedy shall be Customer's sole remedy for failure of the Goods to comply with the above warranty. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR OTHER TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, SUITABILITY, OR FITNESS FOR ANY PURPOSE EVEN IF A PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. WF SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY, TO THE EXTENT PERMITTED BY LAW, FOR ANY LOSS OF BUSINESS, LOST PROFITS, BUSINESS INTERRUPTION, DAMAGE TO GOODWILL OR REPUTATION, DEGRADATION IN VALUE OF BRANDS OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES.

13. **Intellectual Property.** Unless otherwise agreed by the Parties in a separate, duly executed agreement, WF shall own and have exclusive title or shall have exclusive rights to all intellectual property rights in the Goods, including but not limited to all processes, formulas, recipes, and specifications related to or in connection with the Goods and any rights to patents, trademarks, copyrights, or trade secrets appurtenant thereto.

14. **Health and Safety.** It is the Customer's responsibility to ensure that applicable health and safety measures are observed and other appropriate steps taken in relation to storage, handling, and use of the Goods. Customer shall be exclusively responsible for (i) ensuring compliance with all laws and standards associated with the intended use of the Goods; and (ii) obtaining all necessary approvals, permits, or clearances for such use.

15. **Termination.** If Customer is in default of performance of its obligations towards WF and has upon notice and within thirty (30) days thereafter failed to cure said default to WF's satisfaction or if Customer becomes insolvent or otherwise unable to pay its debts, WF may suspend its performance or terminate the Agreement or any PO for outstanding delivery of Goods. In any such event, all outstanding claims of WF shall become due and payable immediately with respect to the Goods delivered to Customer.

16. **Notices.** Any notice required or permitted by these Terms must be in writing in English and delivered in person, sent by registered mail, return receipt requested, postage prepaid, or sent by

## TERMS AND CONDITIONS OF SALE

email and addressed to the addresses provided for on the cover page of the Agreement and to the WF's Legal Department (email: legalnotices@westonfoods.ca). All notices shall be effective on the date received.

17. Independent Contractor. The Agreement shall not create an employer/employee or principal/agent relationship between the parties, who will operate wholly independent companies. The Agreement shall not be construed as binding the parties as partners or as creating any other form of legal association, which would impose liability upon one party for the act or failure to act of the other. The relationship of the parties shall at all times be that of buyer and seller and neither party shall have authority to make any commitment on behalf of the other party. Further, each party is solely responsible for the acts of its respective employees and agents, including without limitation, any negligent acts or breach of an obligation of confidentiality hereunder.

18. Governing Law and Jurisdiction. If the WF address for notice is located in Canada, the laws of the Province of Ontario and the applicable laws of Canada shall govern the Agreement and any related PO and each Party hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario. If the WF address for notice is located in the United States, the laws of the of the State of Indiana and the applicable laws of the United States shall govern the Agreement and any related PO and each Party hereby attorns to the exclusive jurisdiction of the courts of the State of Indiana.

19. Currency. Unless otherwise specifically indicated herein or in a PO, all dollar amounts referenced in the Agreement shall be in the currency of the governing law and jurisdiction of the Agreement. For avoidance of doubt, if Canada, then all currency is in Canadian dollars (CAD), if the United States, then all currency is in U.S. Dollars (USD).

20. Survival. Regardless of the circumstances of termination or expiration of the Agreement, any section which by its nature extends beyond such termination or expiration will survive according to their terms, including but not limited to, this Section 20 and the provisions of: Sections 10 ("Insurance"); 11 ("Recall"); 14 ("Limited Warranty"); 15 ("Intellectual Property"); 16 ("Health and Safety"); and 20 ("Governing Law and Jurisdiction").

21. Assignment. No Party may assign any part of these Terms or any Agreement incorporating these Terms without the prior written consent of the other.

22. Waiver. Failure by WF to enforce at any time any provision of these Terms shall not be construed as a waiver of WF's rights to act or to enforce any such provision or of any other rights of WF.

23. Severability. Any section in these Terms or any Agreement incorporating these Terms that is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent of such prohibition or unenforceability and is severed from the balance of these Terms, all without affecting the remaining sections or affecting the validity or enforceability of such sections in any other jurisdiction.

24. No Public Disclosure. Neither party shall make any public statement, announcement, or disclosure to third parties concerning the existence of the Agreement or its terms, the business relationship

between the parties or the transactions contemplated hereby, without the prior written approval of the other party except as required by applicable law.

25. Successors and Assigns. These Terms and any Agreement incorporating these Terms enure to the benefit of, and are binding on, each of the Parties, and their respective successors and permitted assigns.

26. Language. The Parties hereto agree that the Agreement, and all correspondence and all documentation relating to these Terms or any Agreement incorporating these Terms, shall be written in the English language. *Les parties aux présentes ont exigé que la présente entente, de même que toute la correspondance et la documentation relative à cette entente, soient rédigées en langue anglaise.*

