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Sara Lee Frozen Bakery, LLC.

Purchase Order Terms and Conditions

The following terms and conditions (these "Purchase Terms") shall apply when Sara Lee Frozen Bakery, LLC. and/or any of its affiliates or subsidiaries ("Sara Lee"), is purchasing goods ("Goods") and/or services ("Services") from a Seller ("Seller") pursuant to a Purchase Order ("Order") issued by Sara Lee to the Seller.

1. APPLICATION AND INTERPRETATION

1.1 Seller Terms Excluded. Acceptance of any Order by Seller is limited to acceptance of the express Purchase Terms herein. Any general terms and conditions of Seller are hereby expressly rejected by Sara Lee and excluded. Notwithstanding any language contained in any document of Seller stating the language of such document, or any other document referenced therein supersedes any other language, if the Seller chooses to accept an Order, Seller specifically acknowledges and agrees these Purchase Terms control. Any proposal, confirmation, or any other writing of whatever kind inconsistent with or in addition to the terms of the Order and these Purchase Terms shall not be binding upon Sara Lee. Sara Lee's acceptance of, or payment for, Goods and/or Services will not constitute acknowledgement or acceptance of the Seller's conditions of sale.


1.2 Order of Precedence. The provisions of any Order and these Purchase Terms will be read, to the extent possible, to be consistent. If a provision in an Order directly conflicts with a provision in these Purchase Terms, the provision in these Purchase Terms will prevail unless either (i) the provision of the Order specifies characteristics, quantities, prices, delivery times or other similar commercial terms for Goods and/or Services to be provided under that Order, or (ii) the Order specifically states that the provision in the Order will prevail.

1.3 Acceptance. An Order shall be deemed accepted by Seller upon the earliest of (i) Seller issuing an electronic confirmation or written acceptance of the Order, (ii) Seller's commencement of work on the Goods and/or Services subject to the applicable Order, or (iii) shipment of the Goods and/or delivery of the Services subject to the applicable Order.

1.4 References to Laws. A reference to any law, rule, or regulation is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. COMPENSATION

2.1 Price. The price of the Goods and/or Services shall be as stated in the Order and unless otherwise agreed in writing by Sara Lee shall be F.O.B. delivered and inclusive of all other charges including but not limited to customs, duties, all sales, use, excise and property taxes, shipping, packaging, boxing, crating, labeling, storage, insurance and any other similar charges. In the event a price is not contained in an Order, Sara Lee's agent must be notified of the price and its written acceptance obtained before Seller accepts such Order. No additional costs, fees, surcharges or expenses of any kind shall be added to the Order without the advance written consent of Sara Lee.

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2.2 **Price Warranty.** Seller warrants that the prices for the Goods and/or Services sold to Sara Lee under any Order are as favorable as those currently offered to Seller’s customers for the same or similar Goods and/or Services in similar quantities and type in compliance with all pricing laws and regulations. Seller warrants that prices shown on any Order are complete.

2.3 **Invoices.** Seller shall present Sara Lee with an invoice for the amounts due and owing pursuant to the Order and Sara Lee will pay all undisputed amounts on each invoice within the time period set forth in the applicable Order. Each invoice shall be in a form reasonably acceptable to Sara Lee. Sara Lee shall have no obligation to pay any amounts that Seller fails to invoice to Sara Lee within 120 days after the amounts were incurred. Except as required by applicable laws, Sara Lee shall not be required to pay any late charge, surcharge, interest, finance charge or similar charge.

2.4 **Setoff.** Sara Lee shall have the right to deduct or set-off amounts owed by Seller or any of Seller’s affiliates to Sara Lee against amounts payable under any Order.

3. GOODS PURCHASE PROVISIONS


3.1 **Delivery.** Seller shall deliver the Goods in the quantities, on the dates, and to the places specified in the applicable Order and all Goods shall be properly packed, sealed and secured in such manner as to reach their destination in good condition. If no date is specified in the Order then Seller shall deliver the Goods promptly. Time shall be of the essence.

3.2 **Late Delivery.** If the Goods are not adequately delivered on the due date, in addition to its other rights and remedies, Sara Lee may (i) terminate the Order in whole or in part without liability by notice effective when received by Seller as to Goods not yet delivered, (ii) refuse to accept any subsequent delivery of the Goods which Seller attempts to make, (iii) recover from Seller any expenditure reasonably incurred by Sara Lee in obtaining the Goods in substitution from another provider, or (iv) claim damages for any additional costs, losses or expenses incurred by Sara Lee which are in any way attributable to Seller’s failure to adequately deliver the Goods on the due date.

3.3 **Expedited Shipment.** If, in order to comply with Sara Lee's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in the applicable Order, any resulting increased transportation costs shall be paid by Seller unless the necessity for such rerouting or expedited handling has been directly caused by Sara Lee.

3.4 **Title and Risk of Loss.** Title to and risk of loss of the Goods, including but not limited to any shipping and transit costs, will pass to Sara Lee upon the delivery of the Goods to Sara Lee, provided that in the event the Goods are Non-Conforming Goods as defined herein, title to and risk of loss of such Non-Conforming Goods shall remain at all times with Seller unless Sara Lee agrees in writing to accept such Non-Conforming Goods. If a shipment is not accompanied by a bill of lading, packing slip or similar delivery document, Sara Lee’s count and/or weight will be conclusive.

3.5 **Export-Import Regulations.** Seller will prepare, maintain and, to the extent required under applicable laws, rules or regulations promulgated by any governmental or self-regulatory agency having jurisdiction over a party, submit to the applicable customs authorities, all necessary information and documentation

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to comply with the applicable customs and export and import requirements of each country from which the Goods will be exported and each country into which they will be imported.

3.6 Title. Seller represents and warrants to Sara Lee that the title conveyed on all Goods produced pursuant to any Order will be good and marketable, its transfer rightful, and the Goods will be delivered free from any security interest or other lien or encumbrance (including any statutory or common law lien).


3.7 Specifications. Seller will manufacture and process the Sara Lee Goods only at the Facilities approved by Sara Lee Food Safety & Quality Assurance ("FSQA"), and in accordance with the specifications for Good, packaging, and labeling approved by FSQA, (the "Specifications") as mutually agreed by the parties. Sara Lee may at any time amend their Specifications by giving thirty (30) days prior written notice to Seller. A Seller of a Good must give at least (90) days prior written notice to any amendment of the approved Good Specification. By agreeing to and/or using any Specifications, whether or not modified, whether originating with Sara Lee or elsewhere, Seller accepts full responsibility for such Specifications. Regardless of whether Sara Lee Goods are made using specifications and/or formulations that Seller also uses for Seller Goods, Seller will ensure that FSQA always possesses the current Sara Lee Good formulations and/or specifications and will not change such formulations or specifications without prior notice to FSQA.

3.8 Formulation and/or Processing Change. Seller will not modify or transform the formulation of any Sara Lee Good or Good Supplied to Sara Lee without the prior written approval of the Sara Lee Head of Food Safety and Quality and/or the Head of Procurement, or their designees. This provision will apply to any modification that results in a change in the ingredient statement of the Good, or changes the physical appearance, chemical attributes, or raw material sources/ingredients used in Production of the Good. Because changes to Goods without Sara Lee knowledge or consent can have a material adverse impact on Sara Lee and its customers that would likely be extremely difficult to quantify, if any such changes are discovered by Sara Lee in violation of this paragraph, Sara Lee will be entitled to liquidated damages.

3.9 Initial Food Safety/QA Audit. Before Seller may begin producing Sara Lee Goods or supplying Goods to Sara Lee, the proposed Seller Facility(ies) will provide Sara Lee with a recent GFSI Food Safety/QA audit summary for review. Upon submission of any other type of audit, regardless of the auditing agency, the proposed Facility will allow onsite initial audit if the Sara Lee Head of Food Safety and Quality (or designee) determines the need. The cost of any and all additional follow-up audits required to bring the Facility up to Sara Lee food safety and quality standards will be invoiced to Seller.

3.10 Inspection-Testing. Sara Lee shall have the right, but not the obligation, to inspect and/or test Goods purchased under any Order and reject, in whole or in part, any or all of the Goods contained therein. Nothing contained in any Order or any confirmation or related documents sent by Seller shall relieve Seller from the obligations of testing, inspection, and quality control.

3.11 California Proposition 65. If applicable, Seller will provide all warnings required under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5 (or any other similar local, state, or federal legislation), which requires warning of any Goods containing chemicals known to cause cancer or reproductive toxicity.

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3.12 Standard Shelf Life Expected. Except where shipping volumes of Goods preclude, Goods must have at least 75% of the shelf life left when Good is received by Sara Lee, or no more than 30% of the shelf life expired; Good with less than 75% shelf life remaining is subject to potential rejection upon receipt. In the event a Good shelf life extension is warranted or requested, then it is the Seller’s responsibility to issue written parameters for the shelf life extension, including: the new end date for the extended shelf life, a guarantee of food safety for remainder of the new shelf life, and quality expectations for the new shelf life.

3.13 Warranty. Seller expressly warrants and represents to Sara Lee, its successors, assigns, customers, and users of Sara Lee’s Goods, that all Goods furnished under any Order shall (i) conform in all respects to all samples, specifications and appropriate standards, (ii) meet all performance specifications or guarantees provided either orally or in writing to Sara Lee, (iii) be new, and free from defects in materials or workmanship, (iv) conform to any statements made on the containers, labels, and/or advertisements, (v) be properly contained, packaged, marked, and labeled, (vi) not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights, and (vii) be merchantable, safe and appropriate for the purpose(s) for which Goods of that kind are normally used. In addition, if Seller knows or has reason to know the particular purpose for which Sara Lee intends to use the Goods, Seller warrants that such Goods will be fit for such particular purpose. Inspection, test, acceptance or use of the Goods furnished under any Order shall not affect Seller’s obligation under this warranty, and all warranties shall survive inspection, test, acceptance and use.

3.14 Non-Conforming Goods. Any Goods that are defective, damaged, or fail to conform to (i) the requirements of these Purchase Terms, (ii) the requirements of any applicable Order, (iii) the specifications supplied by Sara Lee to Seller, or (iv) applicable industry or legal fitness and safety standards (“Non-Conforming Goods”).

3.15 Rights with Respect to Non-Conforming Goods. In addition to its other rights and remedies, Sara Lee reserves the right to (i) cancel or terminate for cause any Order, in whole or in part, which contains Non-Conforming Goods or (ii) require Seller to replace or promptly repair defects of any Non-Conforming Goods without expense to Sara Lee. Seller shall be liable for all charges, expenses, field corrections, withdraws, recalls, repurchases, or commissions incurred in the inspection, receipt, transportation, care custody and disposal of the Non-Conforming Goods. If Seller fails to repair defects in or replace any Non-Conforming Goods, Sara Lee may make such repairs or replace such Goods and charge Seller any cost incurred. For Non-Conforming Goods whose defect or non-conformity is not apparent on examination, Sara Lee reserves the right to require correction or replacement as well as payment of damages.

3.16 Information Regarding Non-Conforming Goods. Seller will promptly furnish to Sara Lee all information and copies of all documents (including any complaints, inquiries, test or inspection results, internal reviews, warnings, declarations or notices) that Seller receives which suggest or indicate that any Goods, including but not limited to any ingredient, material, and/or any packaging or supplies used in connection with any Goods, may be Non-Conforming Goods.

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3.17 Food Related Provisions. Seller represents, warrants and guarantees that Goods which are food related Goods, including the contents, packaging, and labeling, sold to, constituting or being a part of any shipment or other delivery now or hereafter made by Seller to or on the order of Sara Lee, and their manufacture, branding and sale, will at the time of such shipment or delivery:

(a) comply with the Federal Food, Drug and Cosmetic Act of June 25, 1938, as amended (the “FFDCA”), including the Food Additives Amendment of 1958 and the Food Allergen Labeling and Consumer Protection Act of 2004; the Federal Insecticide, Fungicide, and Rodenticide Act; the Fair Packaging and Labeling Act; the Poison Prevention Packaging Act of 1970, (collectively, and as applicable, the “Acts”); the HACCP food safety systems requirements of the USDA/FSIS; the provisions of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; the registration requirements of the Food Safety Modernization Act (FSMA); the country-of-origin labeling provisions of the Farm Security and Rural Investment Act of 2002 as amended; and any applicable state food and drug law, the adulteration and misbranding provisions of which are (i) identical with or substantially the same as those found in the Acts, and (ii) are not preempted by the Acts or federal law;

(b) be manufactured in accordance with current good manufacturing practices and any specifications for the Goods to be delivered under these Purchase Terms or any Order and, where applicable, fit for human consumption; and


(c) not be articles which may not, under the provisions of Section 404 or 505 of the FFDCA, be introduced into interstate commerce.

(d) comply with the Sara Lee FSQA Expectations Manual.

(e) comply with the requirements for risk-based preventive controls mandated by the FDA Food Safety Modernization Act (FSMA) as well as the modernized Current Good Manufacturing Practices (CGMPs) of this rule (unless an exemption applies).

Seller further represents and warrants that all color additives that Seller sells or delivers to Sara Lee will be manufactured by Seller and (where color additive regulations require certification) will be from batches certified in accordance with the applicable regulations issued under the FFDCA.

3.18 Nutritional, Ingredient/Materials, and Good Attribute Information. Sara Lee requires Good nutritional, ingredient/materials, and other Good attribute data for all food Goods and non-foods (excluding nutrition), to comply with federally mandated labeling laws. This information will need to be entered in Sara Lee’s Supplier Information Request Form (SIRF), that will be made available to the Seller through the Sara Lee secure web-portal. FSQA will conduct random audits of Seller nutritional information to assure accuracy. If inaccurate or false nutritional, ingredient/materials, and/or other Goods attribute data is discovered, then corrective action warnings will be issued to the Seller; whereupon, upon repeat discoveries are subject to penalties and termination of the Order.

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4. SERVICE PROVISIONS

4.1 Performance of Services. Seller will provide Services purchased in any Order in accordance with these Purchase Terms and the applicable Order. If the Order describes Services in a general or non-specific manner, the Services will include not only those Services specifically described in such Order but also those that are an inherent, necessary or a customary part of those Services. Except as provided by the applicable Order, Seller will be responsible for all materials, facilities, equipment, software and other resources required to provide the Services and Seller shall ensure that all equipment used in connection with an Order is maintained in good working order and in compliance with the manufacturer's instructions and current regulations.


4.2 Services Warranty. The Seller represents and warrants that any Services performed by the Seller (or its duly appointed sub-contractor) will comply to all applicable statutory rules and regulations and shall not infringe or misappropriate any patents, copyrights, trademarks, trade names, trade secrets or other intellectual property rights and be performed (i) in a good, timely, efficient, professional and workmanlike manner using then-current technology, (ii) using sufficient numbers of personnel who have suitable competence, ability, education, training and other qualifications for any assigned roles, (iii) with at least the degrees of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to or higher than the accepted industry standards applicable to the performance of the same or similar Services, and (iv) in compliance with the requirements of the Order and these Purchase Terms.

4.3 Compliance with Sara Lee Policies and Procedures in Performance of Services. Seller will ensure that the Seller personnel, while assigned to provide Services or otherwise visiting or accessing Sara Lee's facilities, will (i) comply with Sara Lee's then-current environmental, health, safety, and security policies and procedures and other policies and regulations applicable to Sara Lee personnel at those facilities, (ii) comply with all reasonable requests of Sara Lee personnel, as applicable, pertaining to personal and professional conduct, and (iii) otherwise conduct themselves in a professional and businesslike manner.

4.4 Rights for Non-Conforming Services. In the event the Services do not conform with these Purchase Terms and the stipulations in any applicable Order, Sara Lee shall, without prejudice to any of its other rights or remedies, have the right to (i) terminate the Order in whole or in part without liability by notice effective when received by Seller as to Services not yet performed, (ii) refuse to accept any subsequent performance of the Services which Seller attempts to make, (iii) suspend any payment obligation in respect to the Services, and (iv) purchase Services to correct or replace the non-conforming Services from an alternative provider after giving Seller notice and charge Seller any cost incurred.

5. TERMINATION

5.1 Termination for Convenience. Sara Lee reserves the right to terminate any Order for convenience, in whole or in part, at any time. Upon notification by Sara Lee, Seller shall immediately stop all work and shall immediately cause any of its Sellers and/or subcontractors to cease such work. Seller shall be paid a reasonable termination charge consisting of a percentage of the applicable Order price reflecting the percentage of the work performed prior to the notice of termination, plus actual direct costs resulting from termination. Seller shall not be paid for any work done after receipt of the notice of termination, or for any costs incurred by Seller's Sellers and/or subcontractors which Seller reasonably could have

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avoided. Notwithstanding the foregoing, in no event shall Seller be entitled to an amount greater than what Sara Lee would have paid absent the termination.

5.2 Termination for Cause. Sara Lee may terminate any Order, in whole or in part, in the event of (i) any default by Seller, (ii) Seller’s failure to comply with these Purchase Terms, or (iii) Seller’s failure to comply with any specific terms and conditions contained in an applicable Order. Late deliveries, deliveries of Non-Conforming Goods and/or performance of non-conforming Services, and/or failure to provide Sara Lee, upon request, reasonable assurances of future performance, shall all be bases for Sara Lee’s right to termination for cause. In the event Sara Lee terminates an Order for cause, Sara Lee shall not be liable to Seller for any amount, and Seller shall be liable to Sara Lee for any and all damages sustained by reason of Seller’s default which gave rise to the termination.

5.3 Termination for Financial Insecurity. Sara Lee may terminate any Order, in whole or in part, as of the date specified in a termination notice if Seller (i) files for bankruptcy, (ii) becomes or is declared insolvent, (iii) is the subject of any proceeding(s) (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for Seller, (iv) makes an assignment for the benefit of all or substantially all of its creditors, (v) takes any corporate action for its winding-up, dissolution, or administration, (vi) enters into an agreement for the extension or readjustment of substantially all of its obligations, or (vii) makes any material misstatement as to its financial condition.

6. INDEMNIFICATION


6.1 General. Seller shall defend, indemnify and hold harmless Sara Lee, including its parents, subsidiaries, sisters and other affiliated companies and each of their respective directors, officers, employees, and agents from and against any and all claims, demands, actions, losses, damages, penalties, liabilities, costs, obligations, and expenses (including reasonable attorneys’, experts’ and legal fees) arising out of or resulting in any way from any act or omission of Seller (its agents, employees or subcontractors, in whole or in part) in performing work in connection with any Order, including but not limited to (i) Seller’s breach of these Purchase Terms and/or any Order, (ii) the actual or alleged infringement or misappropriation of any patent, copyright, trademark, trade name, service mark, trade secret, or other intellectual property right, (iii) violation of any law or regulation of Seller, (iv) any claim that the Goods and/or Services are defective, and (v) any claim that Sara Lee has or had a duty to warn a third party with respect to the Goods and/or Services; provided that Sara Lee gives Seller prompt written notice of any such claim once it has actual knowledge thereof and no settlement or compromise that imposes any liability or obligation on Sara Lee shall be made without Sara Lee’s prior written consent. Notwithstanding the foregoing, Sara Lee shall have the right, but not the obligation, to assume and control the defense and/or settlement of such claim, and Seller shall cooperate in the defense of any such claim and provide such assistance and information as is reasonably necessary for defense of such claim. This indemnity shall be in addition to the warranty obligations of Seller.

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7. INSURANCE

7.1 **General.** Seller will acquire and maintain, at its own cost and expense, and cause any subcontractors and sub-subcontractors to acquire and maintain, during the term of the Agreement, with carriers having an A.M. Best rating of A- VII or better, sufficient insurance to adequately protect the respective interests of the parties. Specifically, Seller must carry the following minimum types and amounts of insurance on an occurrence basis, or in the case of coverage that cannot be obtained on an occurrence, basis, then coverage can be obtained on a claims made basis with a three (3) year tail following the termination or expiration of the agreement.

- (i) Commercial General Liability (including products liability) insurance with limits of not less than \$1 million per occurrence and \$2 million general aggregate, and including but not limited to the following coverages: premises-operations, broad form property damage, blanket contractual liability, products, operations, completed operations, independent contractors, personal injury and advertising injury and liability assumed under an insured contract, and, if applicable, explosion, collapse and underground (XCU); and products/completed operations shall be maintained during the term of the Contract and for 3 years after termination.
- (ii) Business Commercial Automobile Liability insurance for owned, non-owned, hired or borrowed automobile used in the performance of Contractor's obligations under the agreement in the minimum amount of with a \$1 million per occurrence combined single limit.
- (iii) Statutory Workers' Compensation insurance with statutory limits in compliance with the law or laws of the states in which employees are hired or will work, and employers' liability insurance of \$500,000, each employee by accident, each employee by disease and aggregate by disease with benefits afforded under the laws of the state(s) or country(ies) where the services are to be performed. The policies will include an alternate employer endorsement providing coverage in the event any employee of the Contractor sustains a compensable accidental injury while on the contracted work assignment
- (iv) Umbrella Excess Liability:
 - Excess per occurrence and general aggregate \$4 million
 - Excess products/completed operations \$4 million
 - Completed operations extended 3 years
 - (Excess to Employer's Liability, Commercial General Liability including Products Completed Operations, Business Automobile Liability, U.S. Longshoreman's & Harbor Workers Act and Jones Act)

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- (v) Professional Liability errors and omissions; Insurance coverage to be provided by contractor of \$1 million per claim. Professional Liability insurance, including “errors and omissions” coverage, professional negligence, and failure to perform professional duties and breach of contractual obligations under the Agreement shall be maintained by Seller during the term of the Contract and for 13 years following the date of termination, if Seller is performing professional services.


- (vi) A Certificate of Insurance listing Sara Lee Frozen Bakery as additional insured with a waiver of subrogation in favor of Sara Lee Frozen Bakery shall be provided by the Seller
 - Prior to the execution of the Agreement of seven (7) days prior to the start of work under the Agreement and annually upon the anniversary date(s) of the insurance policy’s renewal date(s), Seller will furnish Sara Lee with a Certificate of Insurance evidencing the insurance coverage and terms set forth in the Agreement.
 - Seller shall endeavor to provide thirty (30) days written notice of any cancellation, non-renewal, termination, material change or reduction in coverage.
 - Seller’s insurance as outlined above shall be primary and non-contributory coverage.
 - Seller, Subcontractors, and any sub-subcontractors will cause their insurance companies to waive their right of Recovery against Sara Lee.
 - Seller will be solely responsible for any deductible, or self-insured retention. The stipulated limits of coverage above shall not be constructed as a limitation or potential liability to Sara Lee, and failure to request evidence of this insurance shall not be constructed as a waiver of Seller’s obligation to provide the insurance specified.

7.2 Material Changes. If there is a material change in or cancellation of the insurance required by these Purchase Terms or any Order, then Seller shall provide Sara Lee with at least thirty (30) days prior written notice.

7.3 Property of Employees and Subcontractors. Seller shall require all subcontractors and others performing any Services at Sara Lee facilities to procure and maintain in effect the insurance required by these Purchase Terms or any Order. Seller waives any and all rights of recovery it may have against Sara Lee for damage or destruction of property of Seller or its employees. Seller’s policies insuring any such property will contain a waiver of subrogation clause or endorsement.

8. COMPLIANCE

8.1 Compliance with Laws. Seller expressly represents and warrants that all Goods and/or Services supplied under any Order will have been produced in compliance with, and Seller agrees to be bound by, all applicable federal, state and local laws, orders, rules and regulations. Seller represents that, by acceptance of any Order, it is and shall continue to be in full compliance with all Executive Orders, federal laws, rules and regulations, all as from time to time amended, relating to equal employment opportunity,


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and that the following laws, orders and regulations are hereby incorporated by reference: Equal Opportunity Clause prescribed by E.O. 11246, as amended (41 CFR Chapter 60); Minority Business Enterprises Clause requirements of E.O. 11625 (41 CFR Part 1); the Union Dues Clause prescribed by E.O. 13201 (29 CFR Part 470), the Lilly Ledbetter Fair Pay Act of 2009, and the Employee Notice Clause requirements prescribed by E.O. 13496 (29 CFR Part 471, Appendix A to Subpart A). **Sara Lee and Seller shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans. Sara Lee and Seller shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

8.2 Supplier Code of Conduct. Seller represents and warrants that it has read and that it will comply with the principles, expectations and requirements stated in the Sara Lee Supplier Code of Conduct. In addition, neither Seller nor any of its affiliates in the course of providing Goods and/or Services to Sara Lee under any Order shall (i) use any funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to any political activity or to influence official action, (ii) make any direct or indirect unlawful payment to any foreign or domestic government official or employee (whether full-time or contract), (iii) make or receive any bribe, payoff, influence payment, kickback or other improper payment, or (iv) make any other similar type payments or gifts or give anything of value to any government official or employee that could be deemed a bribe or unlawful. Sara Lee shall have the right to request and review all relevant records of Seller to ensure compliance with the terms of this provision. Seller acknowledges and agrees that Sara Lee retains the right to decline future business opportunities or to end existing business relationships, including the transactions represented in any Order, if Seller does not comply with the Sara Lee Seller Code of Conduct, the additional requirements of this Section 8, or with laws applicable to Seller’s business operations.

9. FORCE MAJEURE

Neither party shall be liable to the other for its failure to comply with the terms of an Order if such failure shall have been caused by any unforeseeable incident beyond the control of the non-performing party, including but not limited to fire, labor dispute, strike, war, insurrection, governmental restriction, or act of God, provided that it shall be the responsibility of each party to take all reasonable measures to eliminate such cause and recommence performance as quickly as possible; and further provided, it shall be the obligation of the party claiming a force majeure event for excuse of non-performance to notify the other party in writing as soon as practicable. In the event Seller claims inability to perform due to an act of force majeure, Sara Lee shall have the right to secure an alternate source of supply and Seller shall reimburse Sara Lee for any additional reasonable expense incurred by Sara Lee. Notwithstanding the foregoing, if the inability of Seller to perform continues for a period greater than thirty (30) days from written notice to Sara Lee, Sara Lee shall have the option of terminating the Order immediately without any liability for Goods not yet shipped or Services not yet performed. Whenever Seller has knowledge of any occurrence (or potential occurrence) which may delay, stop or in any way disrupt Production or shipment of the Goods and/or Services under an Order, Seller shall promptly notify Sara Lee of said occurrence or potential occurrence.

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10. CONFIDENTIALITY


Subject to the terms of any confidentiality agreement with Sara Lee, Seller shall consider the information related to any Order and all information furnished by Sara Lee, including but not limited to any drawings, specifications, and/or other documentation prepared by Seller for Sara Lee in connection with any Order, to be confidential (collectively the “Confidential Information”) and shall not disclose any such Confidential Information to any other person or entity, or use such Confidential Information itself for any purpose other than performing the applicable Order unless Seller obtains written permission from Sara Lee to do so. Unless otherwise agreed in writing, no commercial, financial or technical information disclosed in any manner or at any time by Seller to Sara Lee shall be deemed secret or confidential. Seller’s confidentiality obligations pursuant to this Section 10, as applicable will survive (i) perpetually for trade secrets and personally identifiable information and (ii) for a period of five (5) years from the date of Sara Lee’s disclosure for all other Confidential Information. Seller will return or destroy any Confidential Information promptly upon Sara Lee’s request. If Sara Lee so requests, Seller will provide a certificate, signed by an authorized representative, certifying that all confidential information has been returned or destroyed.

11. RECORDS AND INSPECTION RIGHTS

At all times Seller shall maintain accurate records of packaging inventories, Production, shipment and rejected Sara Lee Good, as well as other records required to be kept by applicable law or as may be reasonably requested by Sara lee. Such records will be available to Sara Lee for audit at any time during Seller's regular business hours upon reasonable notice, and will be retained by Seller as set forth below, based on the 2002 Bioterrorism Act: (a) Food having significant risk of spoilage, loss of value, or loss of palatability occurring after a minimum of sixty days, but within six months: one year and (b) Food having the above risks, occurring no sooner than six months: two years. Sara Lee and its agents and representatives have the right, but not the obligation, to examine the books and records of Seller for the purpose of verifying Seller’s compliance with its obligations under these Purchase Terms and any Order.

11.1 Spot Inspections. In order to protect Sara Lee investment in the Sara Lee Marks, as well as the quality and food safety reputation of its private label Goods, in addition to the provisions set forth below SARA LEE may conduct unannounced spot inspections of the Facilities and the Sara Lee Goods at its sole discretion at any time for the purposes of process, food safety, and Good verification, not to exceed two times (2x) per year. Facility Audits/Inspections. Upon Sara Lee’s request and so long as such disclosure is not prohibited by law or is not in violation of a confidentiality obligation to a third party, Seller shall provide to Sara Lee the results of an annual sanitation or food safety audits made by all Third Party Audit/Inspection Companies, or any Federal, State or Local Governmental Agency during the term of this Agreement related to any Facility were Sara Lee Goods are manufactured.

11.2 Third Party Inspections. As applicable to specific risks to Goods or supply chain continuity, Seller shall notify Sara Lee-FSQA immediately at the FSQA-Mail@SaraLeeFB.com of any third-party food safety or sanitation audits that indicate the presence of food borne pathogens, or illegal/hazardous chemicals, or harmful physical contamination in the Facilities or the Goods or any of Sara Lee’s other Goods manufactured at the Facilities during the term of this Agreement.

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11.3 Government Inspection. Seller shall also inform Sara Lee-FSQA immediately of any non-routine inquiry, investigation or inspection by any federal, state or local governmental agency in connection with the Facilities or the Goods, and upon request shall provide Sara Lee with a copy of any reports related thereto.

11.4 Scheduled Inspections. During regular business hours and on reasonable notice, Sara Lee may inspect the applicable Facility or Facilities at which any Sara Lee Good is being produced, and Sara Lee will comply with all Seller’s applicable rules in conducting such inspections no more than two times (2x) a year. Sara Lee may also review Seller’s records pertaining to the Production, processing and formulation of Sara Lee Goods and packaging, and the services provided hereunder at the same frequency. If such inspection and/or review reveals that the processes, procedures, practices or the manufacturing of the Sara Lee Goods or packaging fails to comply with this Agreement, Seller will immediately take appropriate corrective actions (which may include suspension of Seller’s services hereunder), until Seller can reasonably satisfy Sara Lee that the non-conforming activities have been corrected.


11.5 Audit Information. At the request of Sara Lee, Seller will make available the results of any third-party food safety or sanitation audits made by or for Seller during the term of this Agreement. Seller will notify Sara Lee immediately of any sanitation or Facility audits that indicate the presence of Listeria monocytogenes, Salmonella, E. coli, E. coli O157:H7, or other bacteriological presence or harmful chemical or physical contamination in the Facilities or the Goods or any of Seller’s Goods manufactured at the Facilities during the term of this Agreement.

11.6 Non-routine inquiry, investigation. Seller will also inform Sara Lee immediately of any non-routine inquiry, investigation or inspection by any federal, state or local governmental agency and will provide Sara Lee with a copy of any reports related thereto. Sara Lee will be notified within one working day of any Good recalls, with a copy to FSQA-Mail@saraleefb.com.

12. APPLICABLE LAW - JURISDICTION

12.1 Applicable Law. These Purchase Terms and every Order will be governed by and construed in accordance with the applicable laws of Illinois, without giving effect to the principles of Illinois relating to conflicts of laws. Sara Lee and Seller agree that the United Nations Convention on Contracts for the International Sale of Goods shall be specifically excluded from application to any Order.

12.2 Jurisdiction/Venue. Each party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of these Purchase Terms or any Order must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the state courts of Cook County, Illinois or the Federal courts located in the Northern District of Illinois, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the state and Federal courts located in Illinois, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Notwithstanding the foregoing, claims for equitable relief may be brought in any court with proper jurisdiction within the United States.

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13. LIMITATION ON SARA LEE’S LIABILITY – STATUTE OF LIMITATIONS

In no event shall Sara Lee be liable to Seller for any indirect, incidental, consequential, punitive, special, or exemplary damages or penalties of any description, regardless of the form of the action or the theory of recovery, even if Sara Lee has been advised of the possibility of those damages. Sara Lee’s liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from any Order, or from the performance or breach thereof, shall in no case exceed the price allocable to the Goods and/or Services which gives rise to the claim. Any action resulting from any breach on the part of Sara Lee as to the Goods and/or Services purchased under any Order must be commenced within one (1) year after the cause of action has accrued. This Section 13 is not intended to limit or exclude Sara Lee’s liability for any matter for which liability cannot be limited or excluded by law.

14. WAIVER OF JURY TRIAL

SELLER AND SARA LEE IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING BROUGHT BY THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH OR RELATED TO ANY ORDER OR ANY PORTION OF ANY AGREEMENT WHICH IS RELATED TO ANY ORDER, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY.

15. GENERAL

15.1 Assignment. Seller may not assign any rights or delegate any obligations under these Purchase Terms or any Order without the prior written consent of Sara Lee.


15.2 Subcontractors. Seller will not subcontract any of its obligations without obtaining Sara Lee’s prior written approval. Notwithstanding any approval by Sara Lee, Seller will remain solely responsible for all of its obligations and will be liable for any subcontractor’s failure to perform or abide by the provisions of these Purchase Terms or any Order.

15.3 No Liens. Seller shall promptly discharge any mechanic’s or materialman’s liens, retention rights, security rights or any security interests arising in connection with any Order at Seller’s sole cost and expense.

15.4 Independent Contractors. The parties will at all times be independent contractors. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party.

15.5 Rights and Remedies Cumulative. All rights and remedies reserved by Sara Lee in these Purchase Terms will be cumulative and in addition to, and not in lieu of, any other remedies available at law, in equity or otherwise. Any rights of Sara Lee not expressly granted herein are reserved by Sara Lee.

15.6 Attorneys’ Fees and Costs. In the event of any adversarial proceeding(s) between the parties arising out of any Order, the prevailing party will be entitled to recover from the other party, in addition to any

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other relief awarded, all reasonable expenses the prevailing party incurs in such proceeding(s), including reasonable attorneys' fees and expenses and court costs. For purposes of this section, "prevailing party" means: (a) in the case of the party initiating the enforcement of its rights or remedies, that such party recovered substantially all of its claims, and (b) in the case of the party defending against such enforcement, that it successfully defended substantially all of the claims brought against such party. If no party is a "prevailing party" within the meaning of this section, then no party will be entitled to recover its costs and expenses from any other party.

15.7 Severability. If any provision of these Purchase Terms conflicts with the law under which these Purchase Terms are to be construed or is held invalid or unenforceable by a court of competent jurisdiction, that provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law.

15.8 Publicity. Seller will not, without Sara Lee's prior written consent, (i) use the name, trademark, service mark, trade dress, logo or other identifying marks of Sara Lee in any sales, marketing or publicity activities or materials, and/or (ii) issue any public statement regarding its relationship with Sara Lee.

15.9 Waivers. The failure of Sara Lee to enforce strict performance by Seller of any provision of these Purchase Terms or to exercise any right under these Purchase Terms will not be construed as a waiver to any extent of Sara Lee's right to assert or rely upon any provision of these Purchase Terms. A delay or omission by Sara Lee to exercise any right or power under these Purchase Terms will not be construed to be a waiver of that right or power. Sara Lee's waiver of one breach will not be construed to waive any succeeding breach. All waivers must be in writing and manually signed by Sara Lee.

15.10 Survival. The provisions of these Purchase Terms and any Order that expressly or by their nature contemplate performance or observance after the Order terminates or expires will survive and continue in full force and effect. Without excluding any other provisions of these Purchase Terms and any Order, the terms of Sections 6, 7, and 10 shall survive the termination or expiration of any Order.

15.11 Notices. All notices must be in writing and will be deemed given only when (i) hand delivered, (ii) one business day following the day sent by documented overnight delivery service to the party whom the notice is directed at its address indicated in the applicable Order or otherwise provided in writing, or (iii) sent by electronic mail to the party whom notice is directed at the electronic mail address specified in the applicable Order or otherwise provided in writing, provided, that if notice is provided to Sara Lee under subsection (iii) herein, written confirmation of such notice shall also be provided to Sara Lee as described in subsection (i) or (ii).

15.12 Entire Agreement. These Purchase Terms and the applicable Order collectively constitute the entire agreement of the parties. Notwithstanding the foregoing, in the event Sara Lee and Seller have an existing written agreement signed by an authorized signatory of Sara Lee and Seller encompassing the Goods and/or Services purchased in the Order, these Purchase Terms shall remain in full force and effect to the extent they do not conflict with the terms of such written agreement.