

STANDARD PURCHASE TERMS & CONDITIONS

ALL GAYTAN FOODS, INC. ("GAYTAN") PURCHASES ARE EXPRESSLY CONDITIONED UPON SELLER'S STRICT ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN. NOTWITHSTANDING ANY OTHER PROVISION OF THE PARTIES' AGREEMENT, SELLER ACKNOWLEDGES THAT GAYTAN'S PURCHASING DEPARTMENT MAY NOT RECEIVE NOTICE OF SELLER'S STANDARD TERMS AND CONDITIONS (IF ANY), AS SET FORTH ON SELLER'S INVOICES OR WHICH ACCOMPANY SELLER'S INVOICES OR SIMILAR DOCUMENTATION. SELLER FURTHER ACKNOWLEDGES AND AGREES THAT THE TERMS OF THIS PURCHASE ORDER MAY BE DIFFERENT THAN THOSE SET FORTH IN SELLER'S QUOTATIONS. THUS, IN THE EVENT SELLER DEMANDS INCLUSION OF SOME OR ALL OF ITS STANDARD TERMS AND CONDITIONS AND/OR ANY OTHER TERMS WHICH ARE NOT EXPRESSLY SET FORTH HEREIN (REGARDLESS OF WHETHER SUCH TERMS ARE ADDITIONAL, SUPPLEMENTARY, OR CONTRARY TO GAYTAN'S TERMS), SELLER SHALL NOTIFY GAYTAN IN WRITING OF PURCHASE ORDER NON-ACCEPTANCE WITHIN 48 HOURS OF RECEIPT OF THIS PURCHASE ORDER. SUCH NOTICE MUST BE SENT TO RYAN GAYTAN VIA EMAIL AND CERTIFIED MAIL, AS FOLLOWS: (1) ryan@gaytanfoods.com, (2) Ryan Gaytan, Gaytan Foods, Inc., 15430 E. Proctor Ave., City of Industry, CA 91745.

1. Gaytan must be promptly advised within 48 hours of receipt of this order if lead time is insufficient for any reason, or if any other terms set forth herein are contrary to the parties' agreement.
2. Due to the nature of Gaytan's business and operations, **TIME IS OF THE ESSENCE** relative to all of Seller's obligations.
3. In the event any payment becomes overdue, Seller shall provide Ryan Gaytan of Gaytan Foods, Inc. with written notice of nonpayment via email at ryan@gaytanfoods.com and via certified mail. Upon Ryan Gaytan's actual receipt of the certified mail notice, Gaytan shall then have twenty (20) days from receipt of this notice to cure any late payment. In the event of timely cure, Gaytan shall not be deemed to be in breach of this agreement.
4. The cash discount and "net" payment periods provided for herein shall date from Gaytan's receipt of the goods described on the face of this purchase order, or from the date of Gaytan's receipt of Seller's invoice, whichever is later. For the purposes of determining the timeliness of Gaytan's payments (including cure payments), payment shall be deemed effective on the date of postmark (as printed on the payment envelope by Gaytan's electronic postal meter).
5. This purchase order, including the general terms and conditions as set forth herein, is in confirmation of agreement relative to the subject good(s).
6. In the event goods (as opposed to services) dominate this purchase order in terms of total compensation paid, this purchase order, in addition to the terms and conditions set forth herein, shall serve as a written contract for the sale of goods pursuant to the California (or other state's) Commercial Code.
7. In the event goods (as opposed to services) dominate this purchase order in terms of total compensation paid, all of Gaytan's remedies, as set forth in California's Commercial Code, Article 2 (sale of goods), including but not limited to remedies relative to defective and/or nonconforming goods shall apply to this sale, notwithstanding anything set forth in Seller's invoices or other confirming memoranda. Seller further agrees that due to the complex nature of goods which may be the subject of this agreement, Gaytan shall not be deemed to have accepted the goods (as defined in California's Commercial Code) which are the subject hereof until it has had sufficient time to ascertain the conforming nature of the same. Notwithstanding any other provision of the parties' agreement, nothing herein shall be deemed to limit

Gaytan's available legal or equitable remedies, regardless of whether goods or services dominate this purchase order in terms of total compensation paid.

8. All warranties implied by California's Commercial Code, including California's implied warranties of merchantability and fitness for a particular purpose, shall apply to this transaction, notwithstanding any other terms or disclaimers set forth in Seller's sales invoices or other confirming memoranda. These warranties shall be in addition to any and all express warranties of Seller.

9. Notwithstanding any California (or other State's) Commercial Code provision to the contrary, Gaytan's examination of goods prior to contracting, and/or Gaytan's refusal to perform such examination, shall not act as a waiver, limitation or exclusion of any express or implied warranty, even if such examination may have, should have, or would have revealed such defects.

10. By selling, delivering and/or shipping goods or by performing services in response to this purchase order, Gaytan agrees that the terms of this purchase order, in addition to any and all express written or oral warranties made by Seller, shall be the sole, final and exclusive terms of the agreement between Gaytan and Seller relative to the goods and/or services identified herein.

11. In the event a court of law deems that this purchase order does not constitute a valid contract pursuant to the California (or other state's) Commercial Code, and/or a valid confirmation of agreement relative to the subject goods, then this document shall be deemed to be Gaytan's offer to enter into a unilateral contract, which Seller can accept only by performance (i.e., delivery of goods and/or performance of services). In this case, Gaytan's offer to purchase the goods and/or services specified herein is expressly conditioned upon Seller's agreement to the terms and conditions set forth herein. Any terms set forth in Seller's sales invoice or other confirming sales memoranda, whether additional, supplemental or contrary to the terms set forth herein, shall be of no force or effect (either as a counter offer, rejection of Gaytan's offer, or to supplement or alter the terms of this agreement). By accepting Gaytan's offer as set forth herein by delivering goods and/or performing services, Seller agrees that these Standard Purchase Terms & Conditions, in conjunction with all express written and oral warranties made by Seller, are the final, sole, entire and exclusive agreement between the parties respecting the goods, services and transaction which is the subject hereof. No course of prior dealings between the parties and no industry custom shall be relevant to supplement or explain any term used in this contract.

12. Seller agrees that the terms of this agreement, in conjunction with all express written and oral warranties made by Seller, are the final, sole, entire and exclusive agreement between the parties respecting the goods, services and/or transaction which is the subject hereof, and that any terms set forth in Seller's sales invoice or other confirming sales memoranda, whether additional, supplemental or contrary to the terms set forth herein, shall be of no force or effect. Seller agrees that Gaytan's acceptance of goods shall not act as acceptance of Seller's terms and conditions as set forth in Seller's sales invoice and/or any other confirming sales memoranda of the Seller. In the event Seller does not agree to the terms set forth herein, Seller may reject Gaytan's purchase order (as set forth herein) and refrain from selling such goods and/or services to Gaytan.

13. The sales price shall include all amounts for present or future sales, excise or other similar tax which may be applicable to the sale of the goods and/or services purchased; provided, however, that Gaytan shall be responsible for California Sales Tax. Seller agrees to pay all such taxes, including interest and penalties thereon. If Gaytan is required to pay these taxes (other than California Sales Tax) to the taxing authority, Seller shall, within 30 days of Gaytan's payment to the taxing authority, reimburse Gaytan for the amount paid. Seller further agrees that upon invoicing Gaytan for the amount owed pursuant to this agreement, Seller shall delineate costs associated with all non-taxable items for the purpose of California Sales Tax (e.g., shipping, installation, warranty, etc.)

14. The price applicable to Gaytan's purchases shall be as set forth on the face of Gaytan's purchase order. Unless otherwise stated on the face of this purchase order, the price shall include all charges, levies, deposits and taxes applicable to the production, shipment and sale of the goods, as well as all duties and costs of customs compliance/clearance. Unless otherwise stated on the face of this purchase order, the price shall include all shipping, freight and delivery costs (i.e., FOB Gaytan's designated place of business). Seller hereby acknowledges that in the event the face of this purchase order states that Gaytan is responsible for shipping costs (i.e., pursuant to FOB Point of Origin terms or otherwise), risk of loss will not pass until the goods which are the subject hereof are delivered and secured within Gaytan's facility. Under no circumstances, and notwithstanding any other provision to the contrary, shall risk of loss pass until the goods are delivered and secured within Gaytan's facility.

15. The parties agree that jurisdiction for the purpose of all issues of law, fact or equity arising out of and/or in any way related to this agreement, or any additions, amendments or supplements thereto, shall be in the state or federal courts located in the State of California, only, and venue for the purpose of such proceeding shall be in the County of Orange only. The interpretation of this agreement, as well as any dispute related to or arising from this agreement, shall be governed by California law.

16. This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective assignees.

17. This agreement shall not be assigned by either party without the prior written consent of Gaytan.

18. If, for any reason whatsoever, anyone or more of the provisions of this agreement shall be held or deemed to be inoperative, enforceable, or invalid as applied to any particular case or in all cases, such circumstances shall not have the effect of rendering any such provision inoperative, unenforceable, or invalid in any other case or of rendering any of the other provisions of this agreement inoperative, unenforceable, or invalid.

19. Seller agrees not to sell and/or deliver any product to Gaytan which infringes on any intellectual property right or the proprietary rights of any third parties. Intellectual property rights, for the purpose of this provision, include, but are not limited to, trademarks, tradenames, copyrights, patents, and/or trade secrets. Seller shall defend and indemnify Gaytan for and against any and all claims or suits arising out of or related to Seller's breach of this provision.

20. Any amendment, addendum, or revision to this agreement shall be valid only if in writing and signed by the parties.

21. Any ambiguity in the interpretation of this agreement shall not be construed or interpreted against either party.

22. It is understood that Gaytan is relying upon Seller's expertise and recommendation in purchasing the goods and/or services which are the subject of this agreement. Seller guarantees and warrants that all goods will be manufactured, assembled and commissioned in accordance with prevailing industry standards, and further guarantees that all goods will be fit for their intended, particular and represented purposes. Seller acknowledges that it has reviewed Gaytan's precise specifications, needs, and requirements prior to recommending the goods which are the subject of this purchase order.

23. In the event this Agreement is for the purchase of equipment (as opposed to consumable goods), and unless provided otherwise on the face of this purchase order, Seller shall fully and completely install, commission and start-up all equipment which is the subject of this agreement at no additional cost. For the purposes of this agreement, "install, commission and start-up" shall encompass all that is necessary to achieve and maintain guaranteed and/or represented performance levels.

24. Seller, in conjunction with its obligations set forth herein, shall at all times perform services in compliance with all California laws, statutes and regulations pertaining to worker safety standards, including, but not limited to, those enforced by Cal OSHA and OSHA (including ANSI standards). All Seller service technicians, employees and/or agents shall abide by the aforementioned laws while performing services pursuant to, or related to this agreement. Seller shall defend and indemnify Gaytan for and against any and all claims or suits arising out of or related to Seller's breach of this provision.

25. All goods (including, but not limited to, equipment and raw materials) shall be in compliance with all California laws, statutes and regulations pertaining to worker safety standards, including, but not limited to, those enforced by OSHA and Cal OSHA (including ANSI standards). Seller shall defend and indemnify Gaytan for and against any and all claims or suits arising out of or related to Seller's breach of this provision.

26. All goods (including, but not limited to, equipment and raw materials) that come into contact with Gaytan's products (i.e., food products) or which in any way relate to Gaytan's products shall be food grade, and shall be safe from a consumer safety standpoint. Seller agrees that no goods sold pursuant to Gaytan's purchase order shall create a consumer safety hazard. Seller further agrees that all goods which are the subject of this agreement shall comply with all Federal, State and local laws and/or regulations pertaining to the manufacturing of food products. Seller shall defend and indemnify Gaytan for and against any and all claims or suits arising out of or related to Seller's breach of this provision.

27. Notwithstanding any other term to the contrary herein, Seller agrees that all services performed pursuant to this agreement and/or which are in any way related to this agreement, shall be in conformance with prevailing standards in the industry. Seller agrees that all service personnel assigned to perform services which are the subject of this agreement, which are incidental to the goods, and/or which in any way relate to this agreement shall be qualified and appropriately trained and instructed in order to ensure that all Seller obligations are satisfied in accordance with this agreement.

28. Equipment Purchases: Unless a different time period is set forth on the face of this purchase order, delivery lead times for stock spare, wear, change, warranty and any other stock part required (i.e., parts which are in-stock in one or more of Seller's facilities) shall be twenty-four (24) hours from the time of request (i.e., the part will be delivered within 24 hours). Lead time for a Seller service technician shall also be twenty-four (24) hours from the time of Gaytan's request.

29. Seller is placed on notice that Gaytan is relying upon Seller's expertise in purchasing the goods and/or services which are the subject of this agreement, and confirms that Gaytan has informed Seller of its particular and general requirements (for the purposes of the California Commercial Code), including, but not limited to, those pertaining to Gaytan's product and packing dimensions, and Gaytan's customers' demands.

30. Unless a different time period is provided on face of this purchase order, Seller warrants all Equipment and individual component parts to be free from manufacturing or design defects (whether latent or patent), and free from defects in material and workmanship for a period of twenty-four (24) months, commencing on the installation and commissioning completion date ("Warranty Start Date"). In the event the face of this purchase order specifies that Gaytan is responsible for installation, commissioning or start-up, then the Warranty Start Date shall be the delivery date, as stated on the Seller's signed Proof of Delivery. In the event a defective part requires replacement during the term of this warranty period, the replacement part shall also be afforded this warranty protection throughout the original term of the 24-month warranty period. Seller's warranty shall include all costs of shipping, handling, freight and duties. Seller's warranty further includes all labor costs associated with warranty work.

31. In no event (whether in tort or contract) shall Gaytan be liable to Seller for the payment of any consequential, indirect or special damages. Under no circumstances (whether in tort or contract) shall Gaytan's liability exceed the purchase price set forth on the face of this purchase order.

32. In the event of any dispute arising out of or related to this agreement, the parties shall, within thirty (30) days of such dispute, meet to discuss potential amicable resolution of this dispute. During this time period, Gaytan shall not be in breach due to nonpayment of any invoice. This provision shall not be interpreted to release, postpone or alter any Seller obligation set forth herein.

33. Seller's warranties, as set forth herein, shall survive delivery and shall not be deemed waived either by reason of Gaytan's acceptance of goods or by payment for them. No attempt by Seller to disclaim, exclude or modify the warranties contained herein, or Seller's liability for direct or consequential damages shall be of any force or effect.

34. From time to time, Gaytan's purchase of goods and/or services (including, but not limited to, equipment and raw materials) shall require Gaytan's acceptance of certain product specifications and/or layout designs. Under no circumstances shall Gaytan's conduct in "signing off" on such drawings, designs or specifications eliminate or modify Seller's warranties or liability hereunder. Seller agrees and acknowledges that it is the expert with regard to its goods in question, and that Gaytan shall not be deemed to have assumed responsibility for errors and/or problems contained in or associated with such drawings, specifications or designs and/or implementation of the same.

35. Seller agrees to hold Gaytan harmless from and against any and all claims arising out of or related to any bodily injury or property damage arising out of or related to this agreement and/or the goods or services which are the subject of this agreement, and agrees to indemnify Gaytan for any liability, loss, cost, expense, or other damages (including reasonable attorneys' fees) brought about by any injury of any kind suffered by any person or property as a result of any act, neglect, default, omission of either the Seller or Gaytan or any of their agents, employees, or other representatives, excluding the sole negligence or intentional misconduct of Gaytan or Gaytan's agents, employees, or representatives. This provision shall survive any purported termination of this agreement.