

GAYTAN FOODS, INC.'S STANDARD SALES TERMS & CONDITIONS

ALL GAYTAN FOODS, INC., SALES ARE EXPRESSLY CONDITIONED UPON BUYER'S STRICT ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN

- 1. Terms & Conditions of Sale.** Gaytan Foods, Inc. (hereinafter referred to as "Gaytan" or "Seller") hereby limits acceptance of all purchase orders and/or purchase requests to the Buyer's strict acceptance of the terms and conditions as set forth herein.
- 2. Payment Terms.** The price for the purchase of Gaytan's products (hereinafter "Goods") is as set forth on the face of Gaytan's Sales Order or Sales Invoice. Payment of the full purchase price is due pursuant to the payment terms set forth on Gaytan's Sales Order or Invoice. Risk of loss shall pass upon Gaytan's tender of Goods to the Buyer. In addition to the purchase price of the Goods, Buyer shall pay any and all shipping, transportation, freight, and delivery costs. Invoices not paid when due shall be subject to a late charge equal to 1 1/2% of the amount of the invoice per month, or the highest lawful rate which may be charged to Buyer, whichever is higher. Net payment terms and discount periods shall be calculated from the Invoice date (as opposed to the actual delivery date and/or the date Buyer actually receives Gaytan's invoice). Buyer's payment shall be deemed made upon Gaytan's receipt of such funds. In the event Buyer does not strictly abide by the payment terms set forth herein, then Gaytan shall, as a nonexclusive remedy, and in its sole discretion, have the right to either place a hold on all remaining Buyer orders, or cancel all remaining Buyer orders. Gaytan's subsequent acceptance of payment shall not be deemed a waiver of any kind.
- 3. Delivery.** Buyer will be notified of the approximate delivery and arrival date(s) of the Goods ordered, but Seller does not guarantee nor warrant a particular day of delivery, and Buyer does not rely on a specific delivery date in purchasing the Goods that are the subject of this Agreement. Delivery is contingent upon adequate prior financial arrangements, if applicable, and upon Seller's compliance with all terms of agreement, including payment terms and credit limits. Seller shall not be liable for any losses, damages, claims or causes of action arising from shipping delays. Buyer understands and acknowledges that shipping delays may arise from (or be related to): fire, explosion, flood, storm, acts of God, governmental acts, orders or regulations, hostilities, civil disturbance, raw material shortages, strike, labor difficulties, machinery breakdown, transportation contingencies, difficulty in obtaining supplies or shipping facilities, delay of carriers, or Gaytan's decision to reallocate resources and/or manufacturing capacity. The foregoing list is illustrative and is not exclusive. In the event of non-delivery, Buyer shall be entitled to a refund of only those monies actually paid for the undelivered Goods. Delayed shipments may not be cancelled and/or deemed "undelivered" unless and until such delay exceeds 30 days.
- 4. Acceptance.** Buyer agrees to immediately inspect all incoming Goods upon delivery. Buyer further agrees that within three (3) calendar days from delivery of the Goods to Buyer, Buyer shall notify Seller in writing of any nonconformity, defect or problem with the Goods or any other items delivered to Buyer. Buyer agrees that Buyer's failure to provide written notice to Seller within said time period shall constitute Buyer's unequivocal acceptance of the Goods and agreement and acknowledgment that there is no nonconformity, defect or problem with the Goods.
- 5. Security Interest.** Buyer hereby grants to Seller a security interest in the Goods sold pursuant to this Agreement to secure payment of the purchase price, delivery and shipping costs, and all other fees or amounts which are due to Seller. At Seller's request, Buyer shall execute and pay the necessary filing fees for any financing statements including a UCC-1 statement in a form which is satisfactory to Seller. Buyer will execute all other instruments deemed necessary by Seller. Seller's security interest in the Goods sold pursuant to this Agreement shall terminate upon Buyer's full and final payment of all sums due and owing. A copy of this Agreement may be filed with appropriate state authorities, at any time by Seller, as a financing statement in order to perfect the security interest.
- 6. Financing.** In the event Seller, in its sole discretion, approves of Buyer's purchase of Goods pursuant to a credit or financing transaction, Buyer hereby represents and agrees that it shall execute the necessary financing documents including but not limited to a promissory note and security agreement which secures the purchase price of the Goods with all tangible and intangible assets owned by Buyer.
- 7. No Offset.** Payment of the purchase price and all sums due to Seller shall be made in full pursuant to the terms herein without any deduction or credit. Any deduction, credit, discount or rebate which is due to Buyer shall be remitted to Buyer by check within a reasonable time after Seller's receipt of the full purchase price. Buyer's failure to pay the full amount when due, without any deduction, offset or credit, shall constitute a material breach of this Agreement.

8. Expenses. The sales prices do not include any amount for duties, or for present or future sales, excise or other similar tax which may be applicable to the sale of the Goods or the use thereof by Buyer. Buyer agrees to pay all such taxes and duties including interest and penalties thereon. If Seller is required to pay such taxes to any taxing authority, Buyer will promptly reimburse Seller for the amount paid and such payments shall constitute secured payments for the purposes of this Agreement.

9. Right of Access. Until such time as Seller's security interest in the Goods is terminated, Seller shall have the right to enter onto any of the property of Buyer to enforce its security interest in the Goods, make an inventory of the Goods, and/or to examine the condition of the Goods as well as the manner in which the Goods are stored and kept. Buyer hereby grants Seller an express right of access to the property of Buyer, and hereby agrees that in the event the Seller or its representative enters onto the property of Buyer pursuant to this Agreement, such access shall not constitute trespass for criminal or civil purposes. Buyer agrees that Seller shall have the right to obtain the cooperation of any governmental agency, legal enforcement agency, or other administrative agency in obtaining access to Buyer's property as provided herein.

10. Insurance Requirements. Until such time as Seller's security interest in the Goods is terminated, Buyer shall keep the Goods insured against loss by fire, theft and other causes in an amount and under a form of policy sufficient to cover all Goods then in the possession of the Buyer. Buyer shall pay all premiums or other expenses of the insurance. In case of failure to procure or maintain such insurance, Seller shall have the right but not the obligation to obtain such insurance and the amount so paid shall be immediately due and payable by Buyer to Seller as additional costs incurred.

11. Indemnity. Buyer agrees to hold Seller harmless from and against all claims arising out of or in any way related to this Agreement, and agrees to indemnify the Seller for any liability, loss, cost, expense, or other damage (including reasonable attorney fees) brought about by an injury or loss of any kind suffered by any person, entity or property as a result of any act, neglect, default, omission of either the Seller or Buyer or any of their agents, employees, or other representatives, excluding the sole negligence or intentional misconduct of the Seller or the Seller's employees. This provision shall survive any termination of this Agreement and/or the Seller's security interests, as provided herein.

12. Preservation of Goods. Until such time as Seller's security interest in the Goods is terminated, Buyer shall use any and all means necessary to ensure that Goods sold to Buyer pursuant to this Agreement are preserved, safeguarded, and kept in their original condition free of defects or contamination.

13. Responsibility for Damaged Goods. In the event the Goods delivered by Seller to Buyer pursuant to this Agreement are damaged, contaminated or are defective in any way, Buyer shall give written notice to Seller of such defect, damage or contamination within three (3) days of delivery of the Goods to Buyer's premises or property. In the event such notice is not given, Buyer hereby assumes full responsibility for any damage, contamination, or defect relative to the Goods, and further acknowledges that Goods received pursuant to this Agreement were delivered by Seller in good and acceptable condition. In the event Buyer discovers any Goods which are damaged, contaminated or defective, and Buyer gives Seller notice within the specified time as set forth above, Seller shall, at Seller's sole option, either repair or replace the Goods.

14. Return of Goods. Unless Seller shall have authorized or permitted, in writing, the return of any Goods, Seller shall not be obligated to accept any returns, exchanges or provide any credits for any Goods or part thereof. In the event Seller, in its sole discretion, allows the return of any Goods purchased pursuant to this Agreement, Buyer shall be obligated to pay a restocking charge equal to 20% of the Goods' purchase price.

15. Solvency of Parties. In entering into this Agreement, both Parties to this Agreement represent that they are not financially insolvent and that they have the financial means to carry out their respective obligations under this Agreement. In entering into this Agreement, Seller is relying on Buyer's representation of financial solvency in order to further conduct business relations with Buyer.

16. Representations. No party has made any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and each party does not rely upon any statement, representation, or promise of any other party in executing this Agreement, except as expressly stated in this Agreement.

17. Disclaimer of Express and Implied Warranties and Consequential Damages. IN NO EVENT SHALL GAYTAN BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS REVENUES, BUSINESS

INTERRUPTION AND THE LIKE), ARISING FROM OR RELATING TO THE RELATIONSHIP BETWEEN BUYER AND GAYTAN, INCLUDING, BUT NOT LIMITED TO ALL PRIOR DEALINGS AND AGREEMENTS, OR THE CONDUCT OF BUSINESS UNDER OR BREACH OF THIS AGREEMENT OR ANY PURCHASE ORDER, GAYTAN'S CANCELLATION OF ANY PURCHASE ORDER OR ORDERS OR THE TERMINATION OF BUSINESS RELATIONS WITH BUYER, REGARDLESS OF WHETHER THE CLAIM UNDER WHICH DAMAGES ARE SOUGHT IS BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, STATUTE, REGULATION OR ANY OTHER LEGAL THEORY OR LAW, EVEN IF GAYTAN HAS BEEN ADVISED BY BUYER OF THE POSSIBILITY OF SUCH DAMAGES. GAYTAN'S LIABILITY, IF ANY, SHALL BE LIMITED TO THE LESSER OF THE COST OF REPAIR OR REPLACEMENT VALUE; PROVIDED HOWEVER, THAT UNDER NO CIRCUMSTANCES WILL LIABILITY EXCEED THE AMOUNTS PAID BY BUYER TO GAYTAN UNDER THIS AGREEMENT. GAYTAN SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY OR WHICH ARISE OUT OF THE ACTS OR OMISSIONS OF A THIRD PARTY. THE WARRANTIES AND REPRESENTATIONS SET FORTH HEREIN ARE IN LIEU OF ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY RESPECTING THE GOODS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER'S SOLE AND EXCLUSIVE REMEDY IN CONTRACT, TORT OR UNDER ANY OTHER THEORY AGAINST SELLER RESPECTING THE GOODS OR ACTIONS ARISING OUT OF THIS AGREEMENT ARE AS DESCRIBED HEREIN AND NO OTHER REMEDY (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES) SHALL BE AVAILABLE TO BUYER. SELLER SHALL HAVE NO FURTHER OBLIGATION OR LIABILITY WITH RESPECT TO THE GOODS OR THEIR SALE AND USE, AND SELLER NEITHER ASSUMES NOR AUTHORIZES THE ASSUMPTION OF ANY OBLIGATION OR LIABILITY IN CONNECTION WITH THE GOODS.

18. Default. Buyer shall be in default under this Agreement on the occurrence of any of the following events or conditions: (1) Default in payment or performance of the payment terms included herein, including, without limitation, Buyer's secured payment obligations; (2) Any warranty, representation, or statement made or furnished to Seller by or on behalf of the Buyer proves to have been false in any material respect when made or furnished; (3) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the Goods, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency law by or against the Buyer prior to termination of the Seller's security interest; and/or (4) Failure of Buyer to provide necessary insurance and/or proof of the same as required herein.

19. Remedies for Default. On the occurrence of any event of default, Seller may declare all secured payments due and payable immediately and may proceed to enforce payment and exercise any and all rights and remedies provided by the California Commercial Code as well as other rights and remedies either at law or in equity possessed by Seller. Seller may require Buyer to assemble the Goods and/or make it available to Seller at any place to be designated by Seller. On the occurrence of any default, Seller shall have the right to enter onto any of the property of Buyer to regain possession of the Goods. Expenses of retaking, holding, preparing for sale, selling, or the like shall be paid by Buyer. Upon Buyer's default, Seller may regain possession and dispose of the Goods and apply proceeds received from the sale or other disposition of the Goods to the secured payments, and to payment of attorney fees and legal expenses incurred by Seller as a result of Buyer's default.

20. Waiver of Default. Seller's acceptance of partial or delinquent payment, or the failure by Seller to exercise any right or remedy shall not be a waiver of any obligation of Buyer or right of the Seller, shall not be a modification of this Agreement or of any of Buyer's obligations under this Agreement, and shall not constitute a waiver of any other similar default that occurs later.

21. Notices. Any notices required to be given under this Agreement by either party to the other may be affected by personal delivery in writing or by first class mail, registered mail or certified mail, postage prepaid with return receipt requested. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of the day of receipt or the third day of mailing, whichever occurs first.

22. Choice of Law. This Agreement (and/or any dispute arising out of or in any way related to this Agreement) shall be governed by and construed in accordance with the laws of the State of California. Any action between the Parties which arises from or is any way related to this Agreement shall be venued in the County of Orange.

24. Entire Agreement. This Agreement constitutes the final, complete, exclusive and entire agreement among the Parties with respect to the subject hereof. Any statement of Seller or any agent of seller or any different or additional terms and conditions of other order form(s) submitted by Buyer respecting the Goods or the order shall be given no force or effect.

- 25. Amendments.** Any amendment, addendum, or revision to this agreement shall be valid only if in writing and signed by the Parties.
- 26. Assignment.** This Agreement constitutes a personal contract and the Purchaser shall not transfer or assign the Agreement or any part thereof without the prior written consent of Gaytan.
- 27. Attorneys' Fees.** In the event that litigation, judicial process or any other action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to attorneys' fees and costs.
- 28. Independent Review.** Each party hereto acknowledges and represents that he has fully and carefully read this Agreement and is entering into this Agreement as a free and voluntary act.
- 29. Purchaser Not Agent or Legal Representative.** This Agreement does not constitute Buyer the agent or legal representative of Gaytan for any purpose whatsoever. Buyer is not granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf or in the name of Gaytan or to bind Gaytan in any manner.
- 30. Waiver.** The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
- 31. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable, and binding on the Parties.
- 32. Interpretation.** This document shall be deemed to have been mutually drafted by the parties hereto. Any ambiguity in the interpretation of this Agreement shall not be construed or interpreted against either party.
- 33. Insurance.** Buyer shall obtain and maintain, at its expense for so long as Gaytan shall provide goods hereunder, a policy or policies of Commercial General Liability insurance (including product and completed operations, personal and advertising injury and contractual liability coverage) covering Gaytan, with a minimum of \$2,000,000 per occurrence. For Buyers whose employees enter Gaytan's premises, Buyer shall also obtain and maintain, at its expense, and for so long as such employees shall conduct such operations, a policy or policies of Worker's Compensation Insurance with statutory limits and Automobile Liability Insurance with a minimum of \$2,000,000 coverage limits for each accident, including owned, non-owned and hired vehicles. Buyer agrees to make Gaytan an "additional insured" on each of the above policies, excluding Buyer's Worker's Compensation policy.
- 34. Entire Agreement.** Buyer agrees that the terms of this Agreement are the final, sole, entire and exclusive agreement between the parties respecting the Goods which are the subject hereof, and that any terms set forth in Buyer's purchase order or other confirming memoranda shall be of no force or effect.
- 35. Void Provisions.** If, for any reason whatsoever, anyone or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable 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.
- 36. Pricing.** Buyer agrees that Gaytan retains the right to change and/or increase pricing for Goods upon written or oral notice to the Buyer. Such pricing changes shall apply to all orders that have not yet been delivered (as of the time of notice) to Buyer or Buyer's designated agent.
- 37. Trademark.** This Agreement provides Buyer with a limited and nonexclusive right to use the Gaytan trademark for the sole purpose of reselling Gaytan brand Goods. Any other use of Gaytan's trademark is hereby expressly prohibited.