



Order Acknowledgment Non-Contract Customer General Terms and Conditions

1. DEFINITIONS.

- a. **“Terms and Conditions”**; **“Order Acknowledgement”**; **“Order”**: These General Terms and Conditions of Order Acknowledgment and the Order Acknowledgment into which they are incorporated
- b. **“Buyer”**: The party identified as ordering Products from Better Baked Foods, Inc. or its specified subsidiary or division
- c. **“Seller”**: Better Baked Foods, Inc. or its specified subsidiary or division
- d. **“Products”**: The Products to be purchased by Buyer under the Order
- e. **“Purchase Order”**: Any purchase order or other document or communication from Buyer in connection with the Order
- f. **“Non-Contract Customer”**: Buyer who is not a Party to an Agreement to purchase Seller’s Products, including but not limited to a Supply Agreement and/or Co-Pack Agreement.

2. **ACCEPTANCE.** Buyer agrees to accept these Terms and Conditions as outlined in the Order Acknowledgement. Buyer and Seller further agrees that these Terms and Conditions supersede any other Purchase Order or verbal agreements related to the Products under this Order Acknowledgement.
3. **PRICES.** Buyer agrees that the Products shall be billed at the prices listed in the attached Price Schedule, which may be updated by the Seller in the future.
4. **PAYMENT TERMS.** Buyer agrees to terms of Net 30 unless otherwise mutually agreed to in writing.
5. **LIMITATION OF WARRANTY.** THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, THAT EXTEND BEYOND THE DESCRIPTION OF THE PRODUCTS IN THE ORDER ACKNOWLEDGMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. However, Seller warrants that the Products delivered shall conform to the grade and quantity specified in the Order Acknowledgment. If the Order includes Products which have been manufactured in accordance with specifications approved by Buyer, or supplied by Buyer, those Products are only warranted to be in substantial compliance with the specifications of any such information.
6. **LIMITATION OF LIABILITY.** SELLER’S LIABILITY SHALL BE LIMITED TO THE COST OF REPLACING DULY REJECTED PRODUCTS TO THE POINT OF DELIVERY AS SPECIFIED IN THE ORDER ACKNOWLEDGMENT WITHIN A REASONABLE PERIOD OF TIME FOLLOWING PROPER AND TIMELY REJECTION BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, OF ANY NATURE WHATSOEVER, ARISING FROM NONCONFORMITY OF PRODUCTS OR DELAY IN SHIPMENT, OR ANY OTHER BREACH BY SELLER.
7. **REJECTION.** Written notice of Buyer’s rejection of the Products or claim of shortages and/or damaged material must be delivered to Seller within a period of time not to exceed thirty (30) days after the Products arrive at the destination specified in the Order Acknowledgment. Due to insurance requirements, all claims for shortages and/or damaged material must be supported by written exceptions by Buyer or Buyer’s representative on the delivery documents at the time of delivery or pick-up. Failure to take exceptions against the carrier for short delivery and/or damages shall constitute a waiver of such claims.
8. **TITLE; RISK OF LOSS.** Products are priced and shipped F.O.B. Seller’s dock or any shipping agent of the Seller. Sale, title and risk of loss pass to Buyer upon delivery of the Products to the carrier, unless otherwise mutually agreed to in writing.
9. **DEFAULT.** If Buyer breaches or is otherwise in default under the Order Acknowledgment or under any other contract between the parties hereto, Seller at its option may defer delivery of the Products until the default is cured, or may take any and all legal remedies available..

10. **SELLER'S LIEN.** Until the unpaid contract price and any other amounts payable by Buyer to Seller under the Order Acknowledgment are paid in full, Seller shall have a lien on the Products for the unpaid amounts. Buyer grants to Seller a security interest in the Products to secure payment of such amounts.
11. **FAILURE TO TAKE DELIVERY.** Buyer is required to take delivery of Product within three days of Seller's notification. If Buyer fails to take delivery of the Products or any part thereof, the Seller will invoice Buyer for those Products not delivered and Buyer shall be assessed reasonable storage charges.
12. **CANCELLATION.** Except as otherwise expressly provided in the Order Acknowledgment, the Order shall be cancelled only by mutual written consent of the parties. Notice is hereby given that Seller shall not consent to cancellation if Seller has bound it self to purchase the Products. If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of shipment of the Products or any part thereof, or if Seller has received any adverse credit information about Buyer, Seller may delay shipment and/or cancel the unshipped balance of the Products without liability. Buyer shall be responsible for all fees incurred as a result of (a) any U.S. or foreign government intervention, trade restrictions, and/or quotas; or (b) any governmental fees or duties not presently in effect; or (c) any increase in any existing fee or duty, including any antidumping duty or countervailing duty .
13. **FORCE MAJEURE.** Seller shall not be responsible for delays, failure or omissions due to any cause beyond its reasonable control, wheresoever arising and which cannot be overcome by the exercise of due diligence, including but not limited to, labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, or acts of God.
14. **GENERAL.** The rights and obligations of the parties under the Order Acknowledgment shall be governed by the laws of the Commonwealth of Pennsylvania, U.S.A. in effect as of the date of the Order Acknowledgment, including without limitation the provisions of the Pennsylvania Uniform Commercial Code, but without regard to conflicts of law principles. If any provision of the Order Acknowledgment is determined by any court or arbitrator to be unenforceable, the provision shall be deleted, and the balance of the Order Acknowledgment shall be binding upon the parties. Any agreement signed and sent by facsimile shall be treated as a binding original.
15. **ASSUMPTION OF LIABILITY.** Buyer and Seller liability is limited to the Terms and Conditions as outlined in this Order Acknowledgement.
16. **INDEMNIFICATION.** Each Party shall defend, indemnify and hold harmless the other Party against all damages, claims or liabilities and expenses (including attorney's fees) arising out of or resulting in any way from any defect in the Products or services purchased hereunder, or from any act or omission of either Party, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of each Party.
17. **COMPLIANCE WITH APPLICABLE LAWS, ETC.** The Parties agree that in the performance of its obligations hereunder, they each will comply with all applicable laws, statutes, rules, regulations or orders of the United States Government, or any state or political subdivision thereof, and same shall be deemed incorporated herein by reference. This Order shall be governed by the internal laws of the Commonwealth of Pennsylvania, without regard to the principles of conflict of laws. In any action relating to this Order, Buyer consents to the personal jurisdiction of any court of record of the Commonwealth of Pennsylvania and waives any argument or objection which Buyer might have against or to such jurisdiction or the laying of the venue of any such action in any such court.
18. **VERBAL ORDERS.** No verbal orders shall be binding unless confirmed by Seller's receipt of the acknowledgment copy of this order.