

## **HERSHEY MALAYSIA SDN. BHD. PURCHASE ORDER TERMS AND CONDITIONS**

**Effective Date: November 1, 2016**

**1. CONDITIONS OF ACCEPTANCE:** Acceptance of this contract/scheduling agreement/purchase order ("Purchase Order" or "Order") will form a contract between Hershey Malaysia Sdn. Bhd., or its affiliate as identified on the face of this Order as the purchaser of the Goods and Services ("HSY") and the entity identified on the face of this Order as the seller of the Goods and Services (Seller) for the sale of goods described or services provided, subject to the terms herein and on the face of this Order, HSY's Ingredient Supplier Expectations, and agreed upon technical descriptions, guidelines or specifications ("Specifications") as provided to you, which are incorporated herein by reference ("Order"). This Order will control and govern all terms of sale. The Hershey Company and its subsidiaries and affiliates ("HSY") hereby notifies Seller that HSY rejects any attempt by Seller to limit or condition its liability for breach or damages arising out of its performance or non-performance of this Order. The rights and remedies set forth in this Order are cumulative and are in addition to, and not in lieu or exclusive of all rights and remedies to which HSY is entitled under applicable laws including without limitation the Uniform Commercial Code ("UCC") and the Malaysian Sale of Goods Act 1957, except as expressly limited herein. As used herein, "Goods" will mean any goods and/or services which are the subject of this Order. By its acceptance of this Purchase Order, Seller represents that it has the capacity to produce enough Goods to meet HSY's needs for Goods, and that HSY is not obligated to purchase any minimum volume of Goods pursuant to this Purchase Order.

**2. ENTIRE AGREEMENT:** This Order contains the entire agreement of the parties hereto, and acceptance is limited to the terms hereof. HSY objects to the inclusion of any different or additional terms in Seller's acceptance of this Order, and, if they are included in Seller's acceptance, whether in an acknowledgment, acceptance form, invoice or otherwise, a contract will result only upon HSY's terms as stated in this Order. Even if such different or additional terms are included in Seller's acceptance, whether in an acknowledgment, order confirmation, acceptance form, invoice or otherwise, and whether such documents or copies thereof are countersigned by HSY, those terms will not apply and a contract will result only upon HSY's terms as stated in this Order. The absence of any objection by HSY to any such terms after receiving them, whether in respect of this Order or in respect of any other past or future Order or transaction, will not constitute consent or agreement to any such terms on the part of HSY.

**3. ASSIGNMENT/CHANGE OF CONTROL:** Seller may not assign its rights or obligations under this Order without HSY's prior written consent and HSY at its option, may terminate this Order without penalty, in the event of an attempted assignment. Should Seller attempt to assign its rights or obligations under this Order as a result of a change in control or by operation of law ("Assignment") without such consent, the entity that assumes such Assignment will be deemed to have unconditionally assumed and will be bound by the terms and conditions of this Order.

**4. INVOICING/SHIPPING INSTRUCTIONS:** Seller will: (a) include in each shipment separate packing slips, bills of lading, certificates of analysis (ingredients), certificate of origin (where required by HSY to claim for preferential tariff), showing HSY order number, HSY item or mark number, description of the Goods, including where appropriate the relevant HS code, and

where the Goods are subject to export or re-export control laws the relevant ECCN number and classification, and quantity shipped, (b) promptly forward each invoice to the address indicated on the face of this order, (c) accept payment according to the terms on the face of this Order, (d) include any applicable cash discounts on all invoices, (e) on all prepaid shipments chargeable to HSY, attach transportation receipt to the invoice, as HSY will only pay for actual freight cost incurred, (f) notify HSY: (i) number of packages, size, weight; (ii) method of protection during shipment; and (iii) method for storage and protection upon arrival at destination.

**5. GOODS:** The Goods will conform in all respects to the description on the face of this Order, and/or HSY's then current Specifications. Without limiting the foregoing, the Goods will be new, of first class commercial type and of the latest approved design, unless otherwise specified on the face of this Order. Workmanship, materials, and all inputs will be of the best quality and free from defects that might render the Goods unsuitable or inefficient for the purpose for which it is to be used. Seller warrants and guarantees its Goods for the period of time normally specified for the type of Goods involved, which in any event such warranty will not be less than one year. During the warranty period, all Goods or parts disclosing defects in design, material and/or workmanship will be replaced and delivered by Seller, without cost or delay to HSY. All warranties will survive acceptance of and payment for the goods delivered hereunder, and Seller agrees to save and keep HSY free and harmless from any and all loss, damage, direct or indirect which are foreseeable or which would naturally arise in the usual course of things arising from the breach, or expense whatsoever including attorneys' fees, which HSY may suffer as a result of Seller's failure to fulfill said warranties or any provision of this contract. This warranty is in addition to and not in lieu of, any other warranties or guarantees made by Seller or created or implied as a matter of law, including the warranty of merchantability and the warranty of fitness for a particular purpose. The above warranties, as well as all other warranties contained herein, including, without limitation, the warranties in paragraphs 6, 8, 12, 19, 23 and 24 are collectively referred to as the "Warranties".

**6. INFRINGEMENT:** Seller warrants that Goods sold hereunder and any uses proposed by Seller or reviewed by HSY with Seller do not violate the trademark, patent, copyright, trade secret or other intellectual property rights of any person or entity in any jurisdiction, and Seller will defend HSY and save it harmless for misappropriation of trade secrets, unfair competition and trademark, patent, copyright or other intellectual property infringement which may arise out of the use or sale by HSY of the Goods herein ordered.

**7. GOVERNING LAW AND DISPUTE RESOLUTION:** This Order between HSY and Seller will be governed by and subject to the laws of Singapore without regard to conflicts of law principles. Any dispute arising out of or in connection with this Order, including any question regarding its existence, validity or termination, shall be referred to the Singapore International Arbitration Centre for arbitration, in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, by a sole arbitrator appointed in accordance with the said rules, which rules are deemed to be incorporated by reference in this clause. The arbitration shall be conducted wholly in the English Language. The arbitral award shall be final and binding upon the parties. The cost of arbitration shall be allocated as determined by the arbitrator. Pending arbitration of such dispute, each party shall continue to perform its obligations under this Order, except for the matters in dispute. It is specifically agreed that this Order will not be covered by nor construed in accordance with the terms of the United Nations Convention on Contracts for the International Sales of Goods.

**8. FOOD SAFETY AND QUALITY:** Seller guarantees and warrants that any materials sold by it hereunder and the premises used in connection with the manufacture or storage of such materials or any part thereof, will at all times be fully compliant with all applicable laws including without limitation the US Federal Food Drug and Cosmetic Act, the U.S. Federal Meat Inspection Act, and the U.S. Poultry Products Protection Act which require, amongst others, that the materials not be adulterated or misbranded, the Malaysian Food Act, Food Regulations and other subsidiary orders and regulations, and be compliant in all respects with all applicable regulations of the US Federal Food and Drug Administration or other similar state (including without limitation federal or provincial legislation in Canada) regulatory bodies and any requirements of the Malaysian Food Safety and Quality Division of the Ministry of Health or other regulatory bodies, as may be applicable to the Seller in supplying such materials to HSY under the circumstances. This warranty is in addition to not in lieu of any other warranties or guarantees made by Seller or created or implied as a matter of law.

**9. DELIVERY:** (a) Time is of the essence on all deliveries. Unless otherwise indicated, the delivery date(s) for this order are the dates required on the face hereof. HSY may cancel or modify this Order and will not be held responsible for any losses resulting if the fulfillment of any of the terms or provisions of this contract is delayed or prevented by fire, acts of God, or other casualty, accident, strikes, government acts, or, without limiting the foregoing, by any other cause not within the control of HSY, and which, by the exercise of reasonable diligence. HSY is unable to prevent, whether of the class of causes hereinbefore enumerated or not. If Seller breaches or fails to comply with any provision in this Order, HSY may cancel this Order, in whole or in part, without cost to HSY. (b) Seller may not rely on a course of performance, prior course of dealings or trade usage to imply an agreement to extend the specified time of delivery. (c) If delivery date(s) cannot be met, Seller must immediately inform HSY in writing of Seller's best possible delivery date(s) subject to HSY's acceptance. In addition to any other rights and remedies HSY may have under this Order or provided by law, if deliveries are not made at the time agreed upon. HSY may request that Seller ship the Goods by different and/or expedited delivery (cost of alternative means of or expedited shipment to be borne exclusively by Seller), or cancel this Order in whole or in part and purchase comparable Goods elsewhere and hold Seller accountable for any loss or additional cost arising from such expedited delivery or cancellation. (d) The Goods may not be manufactured, packaged, stored, sampled or tested at or shipped from any location other than the facility on the face of this Order or the Specifications without HSY's prior written consent. (e) Any property owned by HSY which is in Seller's care, custody, or control, will be insured by Seller against loss or damage resulting from fire, or allied perils. Property insurance will be provided on an all risk basis, subject only to standard industry exclusions. The property of HSY will be insured for replacement cost, with HSY to be included as loss payee. Upon request Seller will supply HSY with a Certificate of Insurance, meeting the requirements of HSY as determined in its sole and absolute discretion, covering same and listing Seller as insured and HSY as loss payee providing that HSY will receive at least thirty (30) days prior written notice to such cancellation or material change. Seller will also maintain in force, reasonable comprehensive general and product liability insurance, automobile liability, and workers' compensation insurance.

**10. AUDIT/INSPECTION:** (a) The Goods and the place of manufacture of the Goods ordered hereunder are subject to audit, review, inspection and/or test by HSY or an agreed-upon third party, at the option of HSY (and without obligation to do so) at reasonable times and places either before or after acceptance. Acceptance will not be conclusive as to latent defects, fraud or any other similar

issue not known by HSY. (b) HSY will not be under any obligation to inspect the Goods. Any inspection by HSY will not absolve Seller of any liability or constitute an acceptance of any nonconforming Goods. (c) Seller will promptly pay or reimburse HSY for all costs and damages incurred by HSY, including, without limitation, lost profits which are foreseeable or which arise directly from the breach, costs for packaging, handling, transportation, recall, destruction, production, and other administrative costs including legal fees, which arise or result from the delivery of Goods by Seller that is not in accordance with the Warranties, Specifications or any other term herein. (d) Acknowledgment of receipt on packing slips, bills of lading or other documents will not constitute acceptance. HSY may inspect Goods that are delivered in quantity by sampling; however, such sampling will not constitute acceptance of all such Goods as a unit. (e) If any Goods are defective or otherwise not in conformity with the requirements of this Order, HSY may reject them or require correction(s) or replacement(s). There will be an adjustment of any payments made for rejected Goods, either by Seller's refund or by a deduction from HSY's subsequent remittances. Rejected Goods will be removed and the Goods will be corrected or replaced promptly at Seller's expense and, if returned, will be identified by Seller. If rejected Goods are not promptly replaced or if non-conforming Goods are not promptly corrected HSY may, at its option, elect to perform some or all of the following nonexclusive actions: (i) obtain such Goods or similar Goods elsewhere and charge Seller with any cost increase caused thereby; (ii) terminate this Order for default under paragraph 15; (iii) accept the Goods at a reduced price; and/or (iv) seek other remedies and damages.

**11. WORK ON HSY's PREMISES:** If this Order covers labor, contract or construction work or work of any nature on HSY's premises, all such work will be performed in compliance with HSY's Contractor Rules and Regulations, Contractor Insurance Requirements, General Conditions and/or other guidelines that are hereby made an integral part of this Order. Seller agrees it has no authority to hire any persons on HSY's behalf and each person employed or used by Seller will be Seller's employee, agent or affiliate and not HSY's. Seller is performing all of said work as an independent contractor. Prior to commencing work, Seller will provide certificates evidencing adequate insurance indemnifying Seller and HSY against all such claims and naming HSY as an additional insured.

**12. NON CONFORMING GOODS:** Seller will not substitute non-conforming Goods or back order such Goods without HSY's prior approval, and HSY may reject all or part of any shipment which contains non-conforming Goods. No such Goods will be deemed part of a commercial unit requiring acceptance of their entirety.

**13. CHANGES AND PRICE ADJUSTMENT:** Any changes, substitutions, amendments, cancellation, extensions, revisions or modifications of this Order, in whole or in part and on one or more occasions, will not be invalid or unenforceable because of lack of consideration, provided that said changes, substitutions, amendments, cancellation, extensions, revisions or modifications, are in writing, authorized and confirmed by HSY. No increase in price will be accepted without HSY's written acceptance.

**14. TERMINATION FOR DEFAULT:** If Seller fails to deliver the Goods within the time specified, or otherwise defaults, HSY may terminate this Order in whole or in part (reserving its rights to damages and otherwise at law and equity). In the event of termination for default: (a) Seller will continue performance of any non-terminated portion of this Order, and HSY may obtain

elsewhere the portions of the Goods affected by the termination; and (b) HSY may, at its option, require Seller to transfer to HSY all materials, work in process, completed supplies, tooling, plans and Specifications allocated to the terminated portion of this Order. HSY will, in this event, pay Seller the fair value of such items.

**15. TERMINATION:** HSY may terminate this Order in whole or in part, without incurring penalty or being considered in breach of this Order, at any time whenever the Goods specified herein are no longer required by HSY and for any other reason, upon written notice to the Seller within 30 days prior to the effective date of the termination. If upon such termination, HSY and Seller cannot negotiate a mutually satisfactory settlement within a reasonable time, HSY will pay Seller, and Seller will accept without duplication of any items, as full settlement: (a) Contract price for completed items; or (b) Seller's direct cost allocated to terminated portion of this Order; or (c) Reasonable direct costs of Seller in settling claims arising out of this termination, and in protecting property in which HSY has or may acquire an interest. In no event will HSY be liable for any consequential, indirect, special or punitive damages.

**16. TAXES:** Prices stated in this Order will not include the taxes in effect on the date hereof and levied or assessed with respect to the production, sale or use of the Goods covered by this Order or components thereof which will be borne by the respective parties as required under relevant laws to be imposed, charged, collected, withheld and/or paid accordingly.

**17. CONFIDENTIAL INFORMATION:** Seller will not use, publicize, release or disclose to third parties any information concerning this transaction, the Goods, formula(s) and/or process(es) involving the subject matter of this Order without the prior written consent of HSY. Upon the expiration or termination of this Order, and upon written request from HSY, Seller will: (a) promptly deliver to HSY confidential information in any format; or (b) destroy all confidential or proprietary information related to HSY in its possession and provide written verification of such action.

**18. INTELLECTUAL PROPERTY:** Seller understands and agrees that nothing in this Order, nor in the disclosure of HSY confidential information will convey ownership, title, or any other rights for license thereto to Seller or any person in privity therewith to any proprietary right of HSY, including, without limitation, trade secrets, inventions and patent rights.

**19. EQUAL OPPORTUNITY:** To the extent applicable, the Seller is an EEO/AA employer and will comply with Executive Order 11246 and all other related applicable regulations as well as 41 C.F.R. §§ 60-1.4(a), 60-250.5 (a), 41 C.F.R. § 60-300.5(a) and 60-741.5(a), Section 503 of the Rehabilitation Act of 1973 and Section 402 of the Vietnam Era Veterans Act of 1974.

**20. WORK MADE FOR HIRE:** Unless otherwise noted on this Order or via a separate agreement with HSY, all creative materials and production materials (including drawings) ordered or developed hereunder as well as any inventions or improvements (patentable or otherwise) which are created using HSY confidential information, will be deemed to be "work made for hire" which is owned by HSY and which may be used by HSY in its sole discretion. All such materials (including drawings) will be marked as follows: "This information is the confidential property of The Hershey Company and will not be copied in whole or in part without the prior express written permission of The Hershey Company." Failure to so mark materials will not waive any of HSY's

rights thereto. Seller agrees to cooperate with HSY in perfecting HSY's patent and copyright rights to such materials and to execute any such documents as requested by HSY.

**21. TITLE:** Title to the Goods will pass to HSY at HSY's warehouse or facilities, unless otherwise stated on the face of this Order or rejected by HSY as non-conforming Goods. Seller represents and warrants that good title to the Goods will pass free and clear of all charges, claims and liens of any nature.

**22. INDEMNIFICATION & DAMAGES:** Seller will indemnify and hold harmless HSY and its agents, employees, officers, directors, subsidiaries, affiliates, successors and assigns from and against all liens, claims (including third party claims), encumbrances, demands, losses, attorneys' fees, penalties and/or fines ("Claims"), arising out of or resulting from Seller's performance of the work, use of HSY owned property or equipment, breach of the Warranties, work done on HSY's premises or Seller's negligence or misconduct. This obligation will not extend to Claims to the extent caused by HSY's gross negligence or willful misconduct. Seller will be responsible for all damages and expenses (without prejudice to HSY's rights of repudiation in relation to the same) to HSY that result from Seller's breach of any term or warranty in this document or any Order including Seller's failure to produce Goods according to HSY's Orders and Specifications. Such damages will include, without limitation, any expenses or increased costs of alternative products, business interruption losses (i.e., lost profits based upon inability to fulfill customer demand) which is hereby agreed between the parties to be a foreseeable loss and resulting directly out of the breach by Seller, and all other direct and consequential damages. Seller will also be responsible for HSY's costs of any Goods which cannot be utilized and other expenses directly resulting from capacity conflicts or limitations not identified to HSY in time to prevent such losses.

**23. COMPLIANCE WITH LAW:** Seller agrees and warrants that it is complying and will comply with all applicable government laws, regulations, orders and rules of Federal, State and Municipal government bodies and agencies including, without limitation, 29 CFR part 470, the California Safe Drinking Water and Toxic Enforcement Act, all applicable federal, provincial and municipal laws in Canada and of Malaysia, as the case may require ("Laws") and Seller has not and will not engage in any activity, practice, or conduct that would constitute an offense under those Laws. Seller shall disclose any "conflict minerals," as defined in Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any related rules and regulations as in effect from time to time (collectively, "Section 1502"), used in the production of any Goods, and, in the event such materials are used, shall submit, as applicable, either (i) Seller's report filed with the Security and Exchange Commission under Section 1502, or (ii) a description reasonably acceptable to HSY of measures taken to assure the appropriate sourcing and chain of custody of such materials. Seller also warrants that it is in full compliance with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, and any and all similar regulations in the jurisdiction(s) in which it operates. Seller acknowledges that it has in place procedures adequate to ensure compliance with these Laws by its officers, employees, agents and any other third party or person associated with Seller in the performance of this Order. In relation to this Order, Seller further agrees that it shall not make, offer, or promise to make any payment or transfer anything of value, directly or indirectly, to any third party knowing, or suspecting, that such third party will give the payment, or a portion of it, to any entity or individual for any improper benefit. Additionally, Seller certifies that it conducts all operations in accordance with, and all Goods are produced under,

an appropriate Food Defense Plan that complies with the requirements of the U.S. Customs-Trade Partnership Against Terrorism, the U.S. Maritime Transportation Security Act of 2002, or the U.S. Department of Agriculture Food Safety and Inspection Services model. Seller also will conduct its business in an environmentally responsible manner, in compliance with applicable Laws and the HSY Supplier Code of Conduct, which is hereby incorporated by reference. If HSY receives credible evidence that Seller has not done so, HSY may terminate this Order, refuse to take delivery under same and return any Goods delivered hereunder and obtain reimbursement therefore.

**24. FDA GUARANTY:** Seller guarantees and warrants that the Goods will not at the time of delivery to HSY, or when used as intended by HSY, be adulterated, misbranded or prohibited from distribution and sale, or render or cause HSY foods to be adulterated, misbranded or prohibited from distribution and sale under the U.S. Federal Food, Drug and Cosmetic Act, the U.S. Federal Meat Inspection Act, the U.S. Poultry Products Inspection Act, or any other comparable law governing the safety, production, marketing, labeling, distribution or sale of food. This guaranty is in addition to not in lieu of any other warranties or guarantees made by Seller or created or implied as a matter of law.

**25. PACKING AND MARKING:** Seller shall package all Goods shipped under this Order in accordance with the requirements in this Order, or, if requirements are not specified, in accordance with standard commercial practices customary for similar shipments. When shipping any Goods that are food or food packaging, Seller will ship the Goods under sanitary conditions using carriers suitable for the transport of such Goods that will not render the Goods contaminated with filth, injurious to health, or otherwise adulterated (e.g., carriers that have not been used to transport garbage, waste or other refuse). In each master carton or container in which Goods are shipped, Seller shall include a certificate of analysis, bill of lading, and packing list indicating this Order number, description, quantity, HSY item numbers, and other identifying information corresponding to the information in this Order. Seller shall clearly mark all packages in accordance with all applicable laws and shall label each unit of the Goods with the country of origin, weight, and name of manufacturer. Seller shall ensure that a receiving document/proof-of-delivery is issued to HSY for any shipment made to a third party location. All costs, fines or penalties incurred or assessed due to improper packing or marking will be Seller's responsibility, and if paid by HSY, will be deducted from amounts owed to Seller. Seller will notify HSY of the number of packages, size, weight, method of protection during shipment and method of storage and protection upon arrival at destination.

**26. LABOR AND ENVIRONMENTAL STANDARDS:** Seller will conduct its business in an environmentally responsible manner, in compliance with applicable regulations, which includes without limitation the Malaysian Employment Act 1955, the Occupational Safety and Health Act 1994, the Factories and Machineries Act 1967 and the Environmental Quality Act 1974 (including any amendments, modification and re-enactment of the same) and in accordance with the HSY Supplier Code of Conduct, the terms of which are incorporated herein by reference. HSY may cancel and terminate this Order by providing written notice to the Seller within 7 days from the effectivity of the termination and refuse to take delivery under same and may return goods delivered hereunder and obtain reimbursement therefore.

**27. RECALL:** HSY will have the sole right, exercisable in its discretion, to initiate and direct the scope, breadth and depth of any recall, market withdrawal, stock recovery, product correction

or advisory safety communication (a “Recall Action”), and any and all communications or public statements concerning such an action (including communications with government regulators), that involve the Goods (once title passes to HSY) or any finished products that are made from or otherwise incorporate the Goods. At HSY’s option, HSY may direct Seller to, and upon such direction Seller will, conduct such Recall Action. In the event a Recall Action is initiated or directed by HSY, Seller agrees to fully cooperate and take all such steps as are reasonably requested to implement the Recall Action in a timely and complete manner. All actions taken by Seller in connection with any Recall Action shall comply fully with the U.S. Federal Food, Drug and Cosmetic Act, and any other applicable laws. In the context of Malaysia, Seller shall also be under the obligation to notify HSY immediately in the event the Goods are found to have contravened, whether in the Seller's personal knowledge or by notice from the Ministry of Health, or reasonably be suspected to have contravened any applicable Laws whereupon HSY may direct Seller to conduct or HSY may by itself initiate a Recall Action. In any such cases above, Seller will bear the costs and losses associated with: (a) any Recall Action which results from Seller’s negligence or willful misconduct; (b) Seller's actual or suspected contravention with any applicable Laws; or (c) Goods that do not comply with Seller’s Warranties or HSY Specifications.

**28. SURVIVAL:** All representations and Warranties of the Seller, all rights and remedies of HSY and any other provisions hereof which by their express terms or by implication are to survive, will survive the termination or other expiration of this Order.

**29. WAIVER:** HSY’s failure to enforce any provision of this Order or to require performance by Seller will not be construed as a waiver of such provision nor affect the validity of the Order or any part thereof, or HSY’s right to enforce any provision thereafter. HSY’s rights under this Order are in addition to, and not in lieu of, any other remedies available under applicable laws including without limitation the UCC or the Malaysian Sale of Goods Act 1957 as the case may be, at law or in equity.

**30. PUBLICITY:** Seller agrees not to publish or use any advertising, sales promotion or publicity matter in which HSY’s name is mentioned.

**31. SEVERABILITY:** Each provision of this Order is severable and if any provision will be finally determined to be invalid, illegal or unenforceable (“Invalid”) in any jurisdiction, the remaining provisions will not be affected thereby, nor will said provision be Invalid in any other jurisdiction.

**32. FOOD DEFENSE:** To the extent applicable, Seller certifies that it conducts all operations, and all Goods provided, are produced under an appropriate Food Defense Plan that complies with the requirements of CTPAT, MTSA, or the USDA FSIS model.

**33. LANGUAGE AND CURRENCY:** The parties hereby confirm their express agreement that this Order and all documents directly or indirectly related thereto will be drawn up in English. Unless otherwise stated on the front of this Order, all payments and other financial requirements required under this Order will be in the currency of United States Dollars or Malaysian Ringgit, as the case may be based upon prevailing applicable exchange control laws.