

STANDARD TERMS AND CONDITIONS OF SALE

Sam A. Lupo & Sons, Inc. (“**Supplier**”), offers to sell/provide goods (“**Products**”) only on the terms and conditions herein (“**Terms and Conditions**”), which constitute the entire agreement between Supplier and the customer/buyer (“**Buyer**”) unless Supplier specifically agrees to other terms and conditions in writing.

1. Existing Agreement. Purchase orders which are issued under a written and fully executed sales agreement between Supplier and Buyer are subject to the provisions of that agreement, which shall supersede and control in the event of any inconsistency or conflict with these Terms and Conditions, to the fullest extent permitted by law.

2. Contract; Terms of Service; Express Rejection of Other Terms. Except as provided in Section 1, these Terms and Conditions shall control the sale and provision of Products by Supplier. Supplier’s offer to sell Products shall be deemed accepted by Buyer’s purchase of Products, Buyer’s submission of a request for proposal to purchase Products, Buyer’s submission of a purchase offer to purchase Products, or any other act, communication or instrument of Buyer in response to which Supplier sells Products to Buyer, including without limitation, clicking through the purchase check-out process on Supplier’s website (each a “**Purchase Order**”). If Buyer’s Purchase Order or other correspondence contains terms or conditions contrary to or in addition to these Terms and Conditions, acceptance of any such Purchase Order by Supplier shall not be construed as assent to such contrary terms and conditions or constitute a waiver by Supplier of any of these Terms and Conditions, and Supplier expressly objects to any and all different or additional terms or conditions of sale which Buyer may set forth on any Purchase Order. No addition to or modification of these Terms and Conditions shall be binding upon Supplier unless a duly authorized officer of Supplier agrees in writing to such addition or modification. If Buyer’s Purchase Order or other correspondence contains terms or conditions contrary to or in addition to these Terms and Conditions, acceptance of any such Purchase Order by Supplier shall not be construed as assent to such contrary or additional terms or conditions, or constitute a waiver by Supplier of any of these Terms and Conditions. THIS OFFER IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS. IF THIS FORM IS DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY BUYER, SUPPLIER’S ACCEPTANCE IS EXPRESSLY CONDITIONED ON BUYER’S ASSENT TO THESE TERMS AND CONDITIONS.

3. Price and Payment. The purchase price for the Products shall be as set forth in the Purchase Order. If no payment terms are stated in the Purchase Order, the purchase price shall be payable within fifteen (15) days of the date of Supplier’s invoice. Unless otherwise confirmed in writing by Supplier: (i) all prices, quotations, shipments and deliveries by Supplier are F.O.B. Supplier’s location; (ii) all base prices, together with related extras and deductions, are subject to change without notice; (iii) all Purchase Orders are subject to Supplier’s price in effect at the time of shipment; and (iv) all transportation and other charges are for the account of Buyer, including any increase or decrease in such charges prior to shipment. Products held as a result of Buyer’s inability or refusal to accept delivery are at the risk and expense of Buyer, including, without limitation, all of Supplier’s handling, reshipping, restocking and storage charges. Interest at the rate of two percent (2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer by the due date thereof.

Such interest shall be in addition to the purchase price. Supplier may, without notice, change or withdraw extensions of credit at any time, in which event Supplier may require cash payments and/or collateral security for account balances. Supplier may also refuse to sell to Buyer until overdue accounts are paid in full. If Buyer fails to make any payment when due, in addition to all other sums payable hereunder, Buyer shall pay Supplier the reasonable costs and expenses incurred by Supplier in connection with any actions taken to enforce collection of such unpaid amounts and to protect Supplier's rights, whether by legal proceedings or otherwise, including, without limitation, reasonable attorneys' fees, court costs and other expenses. Supplier's election to not commence legal proceedings to enforce its rights of collection shall not be deemed a waiver by Supplier of its rights to commence such proceedings in the future.

4. Retained Security Interest. Buyer hereby grants Supplier a security interest in any Products delivered to secure the payment of same until the entire purchase price has been paid. The rights and remedies of Supplier, as a secured party with respect to Products, shall be governed by the Uniform Commercial Code, or equivalent state statute(s) where the Products are located. Buyer authorizes Supplier to execute and record on behalf of Buyer such financing statements and other instruments as Supplier may deem necessary to perfect or protect its security interest.

5. Taxes. Unless otherwise agreed in writing by Supplier, prices listed do not include any applicable present or future sales, use, privilege, excise, or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be for the account of and be paid by Buyer. All such applicable taxes, if any, may be added to the price to be paid by Buyer.

6. Changes. At any time, Supplier shall have the right to make changes to the design and/or composition of Products, and make changes in packaging, time, place and schedule of delivery, and/or method of transportation that, in Supplier's sole judgment and discretion, do not materially change the form, fit, function or quality of the Products, and Buyer agrees to accept any and all such changes. Changes made at the request of Buyer shall be at Buyer's risk and responsibility, at the expense of Buyer, and shall be paid for upon receipt of Supplier's invoice. Supplier reserves the right, in its absolute discretion, to add to or remove from the range of products supplied by Supplier, including the Products, and Supplier may do so immediately on written notice to Buyer.

7. Delivery. Specified shipment/delivery dates are approximate. Unless otherwise agreed to in writing, Products will be shipped F.O.B. Supplier's location, unless Supplier agrees in writing to alternate terms regarding freight. Title and risk of loss shall pass to Buyer upon Supplier's transfer of Products to the carrier. In the event goods require extra or special packaging due to the nature of the Products, the manner in which they will be transported or otherwise, Buyer is responsible for the extra charges therefore. Supplier shall not be liable for shipment delays, or any loss or damage to Products while in transit by the common carrier directed by Buyer, and all claims therefore shall be made immediately by Buyer to the carrier. Supplier reserves the right to deliver Products in installments unless expressly agreed otherwise. Supplier will invoice installment deliveries at the time of shipment unless otherwise agreed in writing. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries.

8. Returns and Refunds. Products may be returned by Buyer only when authorized in writing by Supplier. Except for any products designated by Supplier as non-returnable, Supplier will accept a return of Products for a refund of Buyer's purchase price, less the original shipping and handling costs, provided such return is made within five (5) days of shipment and provided such Products are returned in their original condition. To return Products, Buyer must call 800.388.5352 or email Supplier's Returns Department at sam@spiedies.com to obtain a Return Merchandise Authorization ("**RMA**") number before shipping Products to be returned. No returns of any type will be accepted without an RMA number. Products must be returned properly packaged and shipped freight prepaid to Supplier.

9. SETOFF; DEDUCTIONS. IN NO EVENT IS BUYER AUTHORIZED TO DEDUCT ANY AMOUNTS FROM THE AMOUNTS OWED SUPPLIER UNLESS SPECIFICALLY AUTHORIZED IN WRITING BY SUPPLIER.

10. Recalls. If Buyer is required or directed to assist in any suspension of supply or recall of Products for any reason by Supplier or any governmental authority, Buyer shall cooperate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall. The cost and expense of such suspension or recall will be borne by: (i) Supplier to the extent the costs and expenses are the result of Supplier's acts or omissions; and (ii) Buyer to the extent the costs and expenses are the result of acts or omissions of Buyer, its directors, officers, employees, or contractors.

11. Permits, Licenses and Authorizations. Buyer represents and warrants to Supplier that it has all necessary permits and licenses necessary to permit the lawful purchase and use of the Products and, if Buyer intends to resell the Products, Buyer represents and warrants to Supplier that Buyer has all necessary permits, licenses and authorizations necessary to make any subsequent resale of the Products.

12. NO WARRANTIES. EXCEPT FOR THOSE WARRANTIES REQUIRED BY LAW, NEITHER SUPPLIER NOR ANY OF ITS DIRECT OR INDIRECT SUBSIDIARIES OR AFFILIATES MAKES ANY, AND HEREBY DISCLAIMS ALL, WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTY OF FITNESS FOR ANY PURPOSE. Any sample, literature or representation provided to Buyer in any form was to illustrate the general type of goods and not an affirmation that the Products will conform. No employee or representative of Supplier has authority to bind Supplier to any representation, affirmation or warranty not specifically included herein.

13. Limitation of Liability. Notwithstanding anything to the contrary contained herein, Supplier's aggregate liability in connection with the sale or provision of any Products, regardless of the form of action giving rise to such liability (whether in breach of warranty, contract, negligence, strict liability or any other theory in contract, tort or otherwise), shall not exceed the amount actually paid by Buyer to Supplier for such Products. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY DAMAGES OR LOSSES WHICH ARE INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, COST OF CAPITAL, AND/OR ARISE FROM LOSS OF ANTICIPATED PROFITS OR REVENUES, LOSS OF USE OR INCREASED EXPENSE OF USE OF EQUIPMENT OR PLANT, LOSS OF PRODUCTION.

THIS LIMITATION APPLIES REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

14. Confidential Information. The terms of any Purchase Orders from Buyer to Supplier shall be kept confidential. Technical information contained in recipes, ingredients, plans, drawings, specifications, photographs and other documents disclosed or furnished by Supplier with regard to any Products constitutes confidential and proprietary property of Supplier. In the absence of express prior written permission of Supplier, Buyer shall hold all such confidential and proprietary information in confidence and Buyer shall not share such confidential information without anyone outside its organization, and Buyer may not sell or dispose of any portion thereof. Buyer shall not issue any publicity or advertising relating to Purchase Orders, Products, or Buyer's relationship with Supplier without Supplier's prior written consent. In the event of any breach of confidentiality by Buyer, Supplier shall be entitled to all remedies available at law and in equity, including the recovery of any special, consequential, or indirect damages, lost profits, and/or the imposition of injunctive relief.

15. Default. If Buyer shall fail to pay all or any part of the sums due or to become due to Supplier, fail to comply with these Terms and Conditions, fail to keep or perform any of Buyer's obligations, become insolvent or become a party to any federal or state insolvency proceeding or receivership, or become a judgment debtor, such failure shall constitute a default by Buyer, and at Supplier's option, any sum due or to become due to Supplier shall become immediately due and payable in full. Concurrently, or in the alternative, Supplier may at its option, in addition and without prejudice to its other lawful rights and remedies (i) defer further shipments of Products until each default has been corrected to Supplier's satisfaction, or (ii) elect not to make any further shipments of Products, and/or (iii) exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default. No course of conduct, nor any delay of Supplier in exercising any rights, nor Supplier's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of Supplier or be deemed a modification of any Purchase Order.

16. Indemnification. Buyer shall indemnify, defend and hold harmless Supplier and its parent companies and each of their subsidiaries and affiliates, and each of their respective officers, directors, employees, agents, representatives and shareholders, predecessors and successors, from and against any and all claims, demands, causes of action, damages, losses, liabilities, judgments, costs, fees and expenses (including, without limitation, reasonable costs and expenses of investigation and settlement and reasonable attorneys' fees and expenses), to the extent arising out of or relating to (i) any breach by Buyer of its representations, warranties, covenants or obligations set forth in this Agreement; (ii) the negligence or intentional misconduct of Buyer; and/or (iii) the distribution, sale, advertisement, storage or transportation of Products after the time that title to such Products has passed to Buyer.

17. Right of Termination. Supplier, at any time upon notice to Buyer, may terminate or reduce its obligations to deliver Products. In such event, Buyer shall pay for all product shipped even if less than Purchase Order quantity. Buyer shall have no claim for damages, compensation,

loss of profit, allowance or otherwise by reason of, or directly or indirectly arising out of any action taken or notice given by Supplier under or pursuant to the provisions hereof. Purchase Orders may be cancelled by Buyer only with the written consent of Supplier and upon Buyer's payment for any and all expenses and other losses and damages incurred by Supplier a result of such cancellation, including Supplier's out of pocket costs, overhead, and anticipated profit.

18. Force Majeure. Supplier shall not be liable for any delay in or impairment of performance resulting in whole or in part from fire, floods or other catastrophes, acts of God, severe weather conditions, strikes, lockouts or labor disruption, sabotage, embargo, terrorism, wars, riots, embargo, delays, raw material market conditions, the inability to procure supplies or raw materials, or shortages of transportation equipment, fuel or labor; or any other circumstance or cause beyond the reasonable control of Supplier. Additionally, manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction which may prevent or interfere with fulfillment of any Purchase Order.

19. Entire Agreement. Except as set forth in Section 1, these Terms and Conditions constitute the sole and entire agreement between Supplier and Buyer with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, oral or written, are merged herein. No subsequent changes or modifications of these terms and conditions are binding upon Supplier unless approved and accepted by Supplier in writing. Buyer expressly waives all provisions contained in correspondence, forms, or other writings relating to the sale of the Products which negate, limit, extend, or conflict with the provisions hereof. In the event any term or provision hereof shall be deemed unenforceable, the remaining terms and conditions shall remain in effect to the fullest extent possible.

20. Applicable Law, Jurisdiction and Choice of Venue. These Terms and Conditions, and any transaction to which these Terms and Conditions relate, shall be governed by and construed in accordance with the laws of the State of New York without reference to its choice or conflict of law provisions. All disputes between Supplier and Buyer relating hereto shall be resolved exclusively in the state or federal courts located in Broome County, New York. Buyer consents to the personal jurisdiction of such courts.

21. WAIVER OF JURY TRIAL. BUYER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR EITHER PARTY'S PERFORMANCE UNDER THESE TERMS AND CONDITIONS. THIS WAIVER APPLIES TO ANY LITIGATION, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF COMPETENT COUNSEL WITH RESPECT TO THE WAIVER CONTAINED IN THIS SECTION.

22. Assignment. Buyer may not assign or transfer any right or interest in or to these Terms and Conditions and/or any transaction to which these terms and conditions relate, to any third party whatsoever without the prior written consent of Supplier. Any such actual or attempted assignment without Supplier's prior written consent shall constitute a default by Buyer and entitle

Supplier to exercise any and all remedies set forth in these Terms and Conditions and any other remedies available under applicable law.

23. Non-Waiver. Supplier's exercise or failure to exercise or enforce any right or remedy granted or provided by these terms and conditions or its acceptance of or payment for any Products shall not be deemed as or construed to be a waiver of any right or remedy it may have for Buyer's then existing or subsequent default or breach of any representation, warranty, obligation, or covenant applicable to a Purchase Order. Any waiver by Supplier of any default by Buyer shall not be construed as a waiver of any other default, and the failure of Supplier to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time.