

## TERMS AND CONDITIONS

### 1. PARTIES

"Seller" as used herein means the addressee of this order: "Wegmans" as used herein means the Wegmans Food Markets, Inc.

### 2. ACCEPTANCE AND LIMITATIONS

Acceptance of this order must be made by filling out, signing and returning to Wegmans the Acknowledgment Copy attached hereto. The terms and conditions of this purchase order shall not in any manner be changed, limited, controlled, or restricted by any oral statements or the provisions on any of Sellers forms, letters or papers which are inconsistent herewith, unless specifically agreed to in writing by Wegmans. No waiver by Wegmans of any breach of the terms of this order shall operate to relieve Seller of responsibility for any prior or subsequent breach hereunder. Failure to acknowledge as herein provided and shipment in whole or in part of the goods herein ordered shall constitute acceptance of this order and all the terms and conditions herein stated.

### 3. QUANTITY

Goods shipped in excess of Wegmans' order may be returned at Seller's expense. No partial shipments will be accepted unless agreed upon by both parties.

### 4. CHARGES

No charge for packing or cartage will be allowed and all shipments f.o.b. destination or on which full freight is allowed must be prepaid, unless otherwise expressly agreed upon by Wegmans.

### 5. DELIVERY

Risk of loss and/or damage shall be upon Seller until the goods are physically delivered to Wegmans' plant, or to such other delivery point specified in this order. If the goods are delivered in a damaged or defective condition or are damaged during delivery, Wegmans may, at its option, exercise the rights and remedies set forth in Paragraph 7, WARRANTIES, which are available upon refusal or revocation of acceptance and may also refuse to accept delivery of the goods from the carrier. Time is of the essence and Wegmans may, at its option and without limitation of any of its other rights, cancel all or any unfulfilled part of this order if deliveries are not made within the time specified.

### 6. SHIPPING INSTRUCTIONS

Seller warrants and agrees that it will comply with and be governed by the following

shipping instructions and provisions related thereto: **a. PACKING**

Wegmans' purchase order number, part number, and material description should appear on the outside of each package and must appear on all packing slips, invoices, and allied papers. A packing slip must be included with each shipment. **b. INVOICES**

Invoices must be emailed to Wegmans (apinv@wegmans.com) in PDF format within 24 hours following the date of shipment, together with bill of lading, express receipt or other shipping documents. The time for discounting invoices shall begin on the date of receipt of goods at Wegmans' plant or other specified delivery point or on the date of receipt of the Seller's invoice whichever is later.

### c. CARLOAD OR TRUCKLOAD SHIPMENTS.

If carload or truckload shipment is made, Seller will wire or Telex the following information to Wegmans (Attention: Construction Department) on the day shipment is made: contents, car number (if by rail), freight bill number and routing. **d. ROUTING**

If no shipping instructions are specified by Wegmans, Seller shall ship by the most direct and cheapest way. If shipping instructions are specified, Wegmans will charge to Seller's account any excess freight and other expenses resulting from shipments of goods in an unspecified or unauthorized manner. Seller will enter in full on face of bill of lading the routing as shown on face thereof.

### 7. WARRANTIES

All material and/or equipment furnished under this order shall be guaranteed by the Seller to be in strict accordance with all plans and specifications, without defects, and Seller agrees to replace without charge to Wegmans said materials and equipment, or remedy any defects, latent or patent, not due to ordinary wear and tear, or not due to improper use or maintenance, which defects may develop within one year from date of acceptance by Wegmans, or within the guarantee period set forth in applicable plans and specifications, whichever period is longer. Goods rejected on account of inferior quality or workmanship will be returned to the Seller with charge for transportation both ways plus labor reloading, trucking, etc., and are not to be replaced except upon receipt of written instructions from Wegmans.

### 8. COMPLIANCE WITH LAWS

Seller represents and warrants that, in the production and sale of the goods to be delivered pursuant hereto, it has complied with the requirements for the Fair Labor Standards Act of 1938, as amended, and the Occupational Safety and Health Act of 1970, as amended. The Seller agrees to supply Wegmans with all Material Safety Data Sheets (MSDS) required by law and in a format accepted by the OSHA Hazard Communication Standard, 29 CFR 1910.1200 and all associated changes and addendums to the same. The Seller agrees to comply with any and all Federal, State, County and Municipal and/or other local regulations, laws, ordinances and enactments of whatever kind, applicable at the time of sales or which may become effective during the period of construction or fabrication, shipping and/or installation (if installation is included) of the material comprised under this Contract. Any legal disputes arising under this contract shall be governed by the internal laws of the State of New York. Jurisdiction and venue for any legal proceedings hereunder will be in the state and Federal courts located in Monroe County, New York.

### 9. INDEMNIFICATION

Seller agrees to indemnify, defend and save harmless Wegmans, its officers, agents, employees, successors and assigns, from any and all loss, cost, liability and expense, including legal fees or judgments, resulting from any claim made or action brought against Wegmans as a result of goods or services provided hereunder including but not limited to, the ground that use or resale by Wegmans, or by anyone purchasing from Wegmans of these goods or materials hereby ordered infringes any patent, trademark, copyright, trade name, license, or other proprietary right of other parties.

### 10. CANCELLATION

Wegmans shall have the right to cancel this order or any part thereof at any time. If production of the goods or performance of the services hereby ordered has not commenced, Wegmans' liability, in the event of such cancellation, shall be limited to actual expenditures incurred by Seller on this order. If production for the goods or performance of the services has commenced, Wegmans' Liability shall be limited to acceptance of and payment for goods or services the manufacture or performance of which has been completed in accordance with this order and to the payment for actual expenditures incurred by Seller on the balance of the order. Wegmans shall also have the right at any time to elect to have Seller suspend work on goods or services ordered pending a determination of whether or not Wegmans will cancel the order. If Wegmans subsequently elects to cancel the order, its liability to Seller shall be determined as aforesaid but Wegmans shall not be liable for costs or expenses incurred by Seller after the date of Wegmans' election to suspend work. Wegmans shall also have the right to cancel this order without liability hereunder if Seller's rights hereunder are assigned without the written consent of Wegmans or in the event that the Seller becomes bankrupt or insolvent or makes an assignment for the benefit of creditors.

### 11. PRICE AND ALLOWANCES

The contract price appearing on this Contract is final as to payment for the goods covered by the specifically listed items, as defined by the enumerated specification paragraph numbers, with exceptions as noted and there shall be no additions to or other modifications of such contract price, except as such modifications may result from actual change in the specifications. If such changes become necessary, any alteration of the contract price shall be covered by separate order, which shall be issued to cover such changes. Seller shall not proceed with changes affecting contract price without specific authorization in WRITING from Wegmans. Seller warrants that the prices, allowances and other

terms and conditions applicable to this order are as favorable as any currently offered by Seller to any other Customer of the same or substantially similar goods. If more favorable prices, allowances or other terms and conditions are hereunder offered by Seller to any other Customer prior to completion of deliveries hereunder, Seller shall immediately notify Wegmans and such prices, allowances, and other terms and conditions shall apply to such portion of this order as shall not have been delivered on the date such charges become effective. The price or prices of this order are not subject to change or any surcharges resulting from the imposition now or in the future of any sales taxes, Federal, State, Municipal or otherwise, unless agreed to or requested by Wegmans. Wegmans reserves the right to return to Seller at the invoice price all items which are regularly carried in Seller's stock

### 12. DISCOUNTS

Payment and discount periods shall commence only upon receipt of both the material and proper invoice or invoices at destinations specified in this Contract. Wegmans reserves the right to return to the Seller for correction any and all invoices containing error and/or not in agreement with this Contract.

### 13. DISCLOSURES

Seller hereby acknowledges and accepts Wegmans' policy requirements that outside ideas, suggestions, plans, programs, proposals, designs, layouts, constructions, formulae and the like, be submitted to Wegmans on a wholly non-confidential basis in order for Wegmans to consider them and Seller confirms that all disclosures of such matters which it has made to Wegmans in the past have been made on the aforesaid non-confidential basis and without restriction on Wegmans' freedom to use such matters in its business whatever manner it chooses without obligation to Seller, and Seller hereby further agrees that all disclosures to be made by it to Wegmans in the future will be similarly made on the aforesaid non-confidential and unrestricted basis, in the absence of written notice to Wegmans to the contrary for any specific disclosures which Seller wishes to have considered on any other basis.

### 14. WAIVER

Seller agrees and admits that all disclosures made to Wegmans concerning the merchandise, material, work or services ordered herein, and all ideas, suggestions, plans, programs, proposals, designs, layouts, constructions, formulae and the like, utilized or embodied or incorporated therein or pertaining thereto, and all discussions, meetings and correspondence, if any, in regard thereto, have been made, submitted and conducted on a completely non-confidential basis; and Seller further agrees that, except to the extent, if any, that it now owns or may later acquire valid patent rights covering said merchandise, material, work or services, of which patent rights or intention to acquire patent rights it has already given Wegmans express notice, it expressly waives any and all property rights it may have, or may claim to have in or to those ideas, suggestions, plans, programs, proposals, designs, layouts, constructions, formulae and the like, and without in any way limiting the generality of the foregoing. It recognizes and concedes Wegmans' freedom to obtain the same or similar merchandise, material, work or services, or improvements or modifications thereof, from other sources, or to manufacture or provide them itself, and to use and/or sell them, all in any desired quantities or volumes, without any obligation whatsoever to Seller.

### 15. TRADEMARKS

Wegmans' name or trademarks, service marks, trade name, or any derivations thereof may not be used by any supplier for advertising or other purposes without the explicit written approval of an authorized officer of Wegmans.

### 16. INSPECTION

Notwithstanding prior payment to obtain cash discount, all goods will be subject to Wegmans' inspection and approval with respect to material, workmanship and other qualities. If this order covers services, the quality for workmanship and services rendered shall likewise be subject to Wegmans' inspection and approval. The material or apparatus to be supplied against this Contract shall, at Wegmans' option, be subject to inspection and test at the Sellers works.

### 17. TOOLS, DESIGNS, PATIERNs, DIES, ETC.

No tools, designs, patterns, dies, etc., belonging to Wegmans and used by the Seller in the manufacture of the articles contracted for herein shall be used in the production, design or manufacture of articles for any other person, firm or corporation, nor for the manufacture of larger quantities than those specified herein, except with the specific written permission of Wegmans. At the termination of this contract, said tools, designs, patterns, etc., shall be disposed of as Wegmans shall direct. All such items must be permanently marked or identified as property of Wegmans and with the tool number designated by Wegmans.

### 18. APPROVALS/SUBMITTALS

All material and equipment furnished under this order shall be subject to the approval of the architect, engineer, or any other party designated, and Seller shall furnish the required submittal data and/or number of samples for said approval. In the event such approval is not obtained, the order is cancelled, with no liability on the part of either Wegmans or the Seller, unless the order is placed with the understanding that the material and/or equipment is to be supplied of the type and in such a manner as to meet requirements of plans and specifications. In the latter case Seller shall comply without further cost to Wegmans.

### 19. DESIGN CAPACITIES

Seller shall guarantee equipment covered under this Purchase Order to produce capacities or meet design specifications and functions.

a.) as called for in the plans, specifications or addenda

b.) as herein set forth

c.) as published or warranted by the manufacturer for the equipment involved

In the event the equipment does not meet the foregoing requirements, Seller shall immediately on notice replace same, or remedy any deficiency, without expense to Wegmans; and further, Seller shall pay to Wegmans an consequential loss or damage resulting therefrom.

### 20. LIEN WAIVERS/AFFIDAVITS

Seller shall furnish all necessary lien waivers, affidavits or other documents, required to keep Wegmans' premises free from liens or claims for liens, arising out of the furnishing of the material or equipment herein, as payments are made from time to time under this contract.

### 21. PRIOR AGREEMENTS

All prior representations, conversations, or preliminary negotiations shall be deemed to be merged in this order, and no changes will be considered or approved unless this Contract is modified by an authorized representative of Wegmans in WRITING.

### 22. DEFAULT

In the event of default of any of the terms or conditions set forth herein, the Seller agrees to pay any costs resulting therefrom, including but not limited to, reasonable attorney's fees.

### 23. ASSIGNMENT

The Seller agrees not to assign this contract, or any money due or to become due to the Seller hereunder, without the written consent of Wegmans first had and obtained.