

## THE HERSHEY COMPANY PURCHASE ORDER TERMS AND CONDITIONS

**Effective Date: November 1, 2016**

**1. DEFINITIONS:** “Order” means these Purchase Order Terms and Conditions (these “T&Cs”), together with the purchase order to which they are physically or electronically attached and any other document incorporated by reference or attached to such purchase order. “Goods” means any goods described on the face of this Order. “Services” means any services described on the face of this Order.

**2. ACCEPTANCE; NO ADDITIONAL TERMS:** This Order forms a contract between The Hershey Company, a Delaware corporation, 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 the Goods and Services, subject to the provisions of this Order. These T&Cs govern this Order. Unless accepted earlier, shipment of any Goods or performance of any Services constitutes Seller’s acceptance of this Order (including these T&Cs), regardless of whether Seller has signed or acknowledged this Order. No other terms in any document given by Seller shall in any way govern this Order, modify or supersede any of the terms of or otherwise have any effect on this Order, or be binding on HSY. HSY hereby expressly rejects all such other terms and the absence of any objection by HSY to any such terms after receiving them will not constitute consent or agreement to any such term on the part of HSY. If this Order is issued pursuant to an existing agreement between HSY and Seller (the “Existing Agreement”), then the provisions in the Existing Agreement will prevail over these T&Cs and these T&Cs will have no force or effect with respect to this Order. The terms on the face of this Order will govern over these T&Cs, in the event of a conflict between such terms.

**3. QUANTITIES:** Quantities will be as set forth on the face of this Order.

**4. SCHEDULE:** Seller shall deliver the Goods and perform the Services in accordance with the schedule set forth on the face of this Order (the “Schedule”). Timely delivery of all Goods and performance of Services under this Order is of the essence. HSY has the right to reject any early delivery of Goods. The failure or delay of either party to perform any obligation under this Order by reason of earthquake, flood, fire, acts of God, riots, wars, terrorist incidents, or acts of government, each of which are beyond such party’s reasonable control (“Force Majeure”), shall not be deemed to be a breach of this Order, provided the party so prevented from complying herewith shall (a) have provided notice of such event to the other party (including an explanation of the Force Majeure and its cause and status), (b) have used reasonable diligence to avoid such Force Majeure or ameliorate its effects, and (c) continue to take commercially reasonable actions to comply as fully as possible with the provisions of this Order. HSY may terminate or modify this Order in the event of any Force Majeure affecting either party’s performance under this Order. In the event of any delay in the Schedule not caused by Force Majeure, Seller will notify HSY immediately of such delay and of a new proposed schedule, which will be subject to HSY’s acceptance. If HSY does not accept the new proposed schedule, the initial Schedule will remain binding on Seller, and HSY may (a) require Seller to expedite the shipment of the Goods by means selected by HSY or (b) terminate this Order, in whole or in part, and obtain replacement goods or services from alternative suppliers. Seller will be solely responsible for the cost of the expedited

shipment of the Goods and any costs or damages incurred by HSY in connection with the delayed Goods or Services, including the difference between the cost of replacement goods or services from alternative suppliers and the Price of the delayed Goods or Services and for any other cost or damages incurred by HSY in connection with the delay. Seller shall allocate any shortage of Goods proportionately among Seller's obligations to HSY under this Order and to Seller's other regular customers then under contract, and Seller waives its rights under 13 Pa. Cons. Stat. § 2615(2) to allocate capacity to regular customers not then under contract.

**5. PRICE:** The unit price on this Order (the "Price") constitutes the entire compensation for the Goods and Services, unless specifically stated otherwise, and includes any charges for labor, technical and professional services, materials, overhead, profit, packaging and preparation for shipment, loading, freight, insurance, transportation and all federal, state and local fees, tariffs, duties, levies, and taxes (exclusive only of any U.S. sales or use taxes). Unless otherwise provided for in the Delivery Term (as defined in Section 9), HSY will not be responsible to Seller for any charges other than the Price and any U.S. sales or use taxes.

**6. INVOICES:** Seller shall issue the invoice to HSY to the address indicated on the face of this Order with each shipment of Goods. For Services, Seller shall issue the invoice(s) upon completion of the Services or otherwise in accordance with the schedule agreed upon by the parties. Seller shall not invoice, and HSY shall not be responsible for the payment of, any amounts that are invoiced more than 30 days past the date of delivery of the Goods or performance of the Services to which such amounts apply. Each invoice shall be accompanied by all required documentation necessary to support all charges. Seller shall include any freight cost as a separate line item on, and shall attach a copy of the freight bill to, the invoice. Seller shall identify sales and use taxes, applicable rebates and discounts separately on each invoice. Seller shall separately state charges for Services from charges for Goods on each invoice. Any invoice submitted to HSY in an improper format or without the required documentation will be returned unpaid to Seller for correction and resubmission.

**7. PAYMENT:** HSY will pay all undisputed and properly documented invoices in accordance with the payment terms set forth on the face of this Order. HSY may withhold payment of any amounts it disputes in good faith. No payment by HSY of any invoice will be deemed HSY's acceptance of the Goods or Services described on the invoice.

**8. 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.

**9. DELIVERY:** Without HSY's prior written consent, the Goods may not be manufactured, packaged, stored, sampled or tested at or shipped from any location other than Seller's facility identified on the face of this Order or in the Specifications. Seller will deliver the Goods at the place of delivery stated on the face of this Order in accordance with the applicable Incoterms® 2010 delivery term and any other stipulated delivery terms stated on the face of this Order (the "Delivery Term"). Risk of loss of the Products will transfer from Seller to HSY in accordance with the Delivery Term. Title to the Goods will transfer from Seller to HSY at the time that risk of loss of the Goods transfers pursuant to the preceding sentence.

**10. INSPECTION:** Seller shall make the Goods and the place of manufacture of the Goods available for audit, review, inspection and testing by HSY and its designees at reasonable times either before or after acceptance of the Goods. HSY shall have the right, but not the obligation, to inspect all Goods at the final destination, and all Goods will be subject to acceptance by HSY at the final destination. HSY's acceptance of any Goods will not be deemed evidence that such Goods conform to this Order, including the Specifications, and will not be conclusive as to latent defects, fraud or any other similar issue. Inspections will not relieve Seller of its obligation to provide Goods that comply in all respects with the requirements of this Order, including the Specifications. Acknowledgment of receipt will not constitute acceptance. HSY may inspect Goods that are delivered in quantity by sampling; except that such sampling will not constitute acceptance of all such Goods as a unit. If HSY determines, in its sole discretion, that any Goods are Nonconforming Goods or otherwise fail to conform to this Order, HSY may, in its sole option, reject all or part of any shipment that contains such Goods.

**11. FACILITIES; PERSONNEL:** If the Services will be performed on HSY's premises, Seller shall comply with HSY's Contractor Rules and Regulations, Contractor Insurance Requirements, General Conditions and any other guidelines, which HSY will communicate to Seller and which are hereby incorporated by reference. Seller shall provide Services through its bona fide employees or subcontractors having a skill level appropriate for the Services. To the fullest extent permitted by applicable law, Seller shall carefully interview, screen and check its employees and prospective employees to determine suitability for the performance of the Services. HSY may require Seller to remove any of Seller's employees or approved subcontractors from the performance of the Services at any time and for any reason.

**12. WARRANTIES:** Seller represents, warrants and covenants that (a) all Goods delivered under this Order will (i) conform strictly to the technical descriptions, guidelines, specifications and other requirements communicated by HSY to Seller (the "Specifications"), (ii) be free from defects in materials, workmanship, and design, (iii) be fit for their intended purpose, (iv) be of first quality and made of new materials and components, and (v) be manufactured and shipped in accordance, and will conform in all respects, with all applicable Laws, (b) title to all Goods will be good, and its transfer rightful, and that the Goods will be free from all security interests, claims, demands, liens and other encumbrances, and (c) the Services performed under this Order will (i) be performed in a good, prompt and diligent manner and in strict accordance with all conditions

and requirements contained in this Order and (ii) reflect the level of skill, knowledge and judgment required or reasonably expected of suppliers performing comparable services. If HSY discovers that any Good or Service fails to conform to any the above warranties (as applicable, a “Nonconforming Good” or “Nonconforming Service”), HSY shall give Seller written notice of the nonconformity within a reasonable time after discovery. Seller, at HSY’s option and at Seller’s sole expense, shall promptly retrieve Nonconforming Goods and (y) repair, replace (by expedited shipment, upon HSY’s request) or otherwise remedy any Nonconforming Good or re-perform any Nonconforming Service, so that it conforms to the above warranties, or (z) refund to HSY the Price of the Nonconforming Good or Nonconforming Service. If Seller is unable to remedy such nonconformity during a time period consistent with HSY’s reasonable requirements, HSY may undertake to remedy the nonconformity, and in such case, Seller shall reimburse HSY for any reasonable costs HSY incurs in excess of the Prices for such Good or Service that would have been due Seller under this Order and may terminate this Order for cause under Section 24. Seller shall assign to HSY all applicable warranties extended to Seller with respect to all Goods, or portions thereof, not manufactured by Seller; provided, however, that Seller’s extension of such warranties shall not relieve Seller of its obligation to repair or replace any Nonconforming Good.

**13. NON-INFRINGEMENT:** Seller represents, warrants and covenants that neither the Services (including HYS’s use thereof) nor the Goods or the manufacture (including any manufacturing method), use, importation, sale or offer for sale of the Goods will infringe or misappropriate any proprietary, intellectual property or other rights of any third party. If any Good or Service, or HSY’s use of any Good or Service is held to constitute any such infringement or misappropriation and its use by HSY is enjoined, Seller, at no cost to HSY, shall procure for HSY the right to continue using the Good or Service, as applicable, or provide HSY with a substitute Good or Service conforming to this Order.

**14. 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.

**15. COMPLIANCE:** Seller warrants that it is and will remain in full compliance with all applicable laws, regulations, codes, sanctions, orders, rules and ordinances of federal, state, provincial and municipal government bodies and agencies (“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. Without limiting the generality of the foregoing, Seller also warrants that it is and will remain in full compliance with all applicable Laws relating to anti-bribery and anti-corruption in the

jurisdictions 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.

**16. EQUAL OPPORTUNITY:** Seller shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a), as applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

**17. CONFIDENTIALITY; PUBLICITY:** Seller will not use, publicize, release or disclose to third parties any information concerning this Order, the Goods or Services or any formulas or processes involving the subject matter of this Order without HSY's prior written consent. Upon the expiration or termination of this Order or HSY's written request, Seller will promptly deliver to HSY or destroy (and provide written verification of such destruction) all such confidential information in any format in Seller's possession. Seller will not publish or use any advertising, sales promotion or publicity matter in which HSY's name is mentioned without HSY's prior written consent.

**18. HSY PROPERTY:** Seller agrees that nothing in this Order, nor in the disclosure of HSY confidential information, will convey to Seller or any third party any right, title or interest in or to any proprietary or intellectual property right of HSY, including trade secrets, inventions and patent rights. Seller shall respect all such rights and shall not make, use or sell any materials reflecting any such rights for any purpose other than to fulfill this Order, without HSY's express written permission. All drawings, blueprints, photographs, sketches, software (in source code and object code format), Specifications, plates, cylinders, electrotypes, models and other materials (the "Materials") developed or prepared by Seller for the purpose of, or in the course of fulfilling, this Order shall belong to HSY (the "Developed Materials") and all Developed Materials that are works of authorship will be deemed "works made for hire" within the meaning of the copyright laws of the U.S. and similar laws of other jurisdictions. HSY will own all right, title and interest in and to all such Developed Materials, including any "works made for hire." Seller hereby irrevocably assigns to HSY, and shall require its employees, subcontractors and agents to assign to HSY, all

rights, title and interest, including any intellectual property rights, in and to any of the Developed Materials. To the extent HSY or its agents provide to Seller any Materials, such Materials shall remain HSY's property (all such materials, together with the Developed Materials, the "HSY Materials"). HSY Materials may not be used for or disclosed to any non-party without HSY's prior written consent. Seller agrees to execute, and shall cause Seller personnel to execute, any documents or take any other actions as may reasonably be necessary, or as HSY may reasonably request, to evidence, perfect, maintain and enforce HSY's ownership of any Materials. Upon HSY's request, Seller shall provide, or return to, HSY all HSY Materials, including any copies made. Seller may, however, retain one copy of such HSY Materials for record purposes.

**19. INDEMNIFICATION:** Seller will indemnify, hold harmless and, upon HSY's request, defend HSY, its affiliates and their respective employees, officers, directors, agents, successors and assigns from and against all liens, encumbrances, claims, demands, losses, damages, liabilities and expenses (including reasonable attorneys' fees) to the extent arising out of or relating to (a) Seller's breach of any provision of this Order, (b) the negligence, willful misconduct or dishonest or fraudulent acts or omissions of Seller or its employees, agents or subcontractors, and (c) any allegation by a third party that any portion of the Services (including HSY's use thereof) or the Goods or the manufacture (including any manufacturing method), use, importation, sale or offer for sale of the Goods infringes, misappropriates or otherwise violates such third party's proprietary, intellectual property rights or other rights of such third party.

**20. 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, and any and all communications or public statements concerning such an action, including communications with government regulators that involve the Goods (once title in the Goods passes to HSY) or any further finished products that are made from or otherwise incorporate the Goods (a "Recall"). At HSY's option, HSY may direct Seller to, and upon such direction Seller will, conduct any Recall. Seller, at its expense, shall fully cooperate and take all such steps as HSY reasonably requests to implement any Recall in a timely and complete manner. All actions taken by Seller in connection with any Recall shall comply fully with the U.S. Federal Food, Drug and Cosmetic Act, the U.S. Federal Meat Inspection Act, the U.S. Poultry Products Inspection Act, and any other applicable laws. Seller will bear all costs and losses associated with any Recall unless and to the extent the Recall is caused by HSY's negligence, in which case Seller will bear only its applicable portion of such costs.

**21. INSURANCE:** Unless otherwise noted within this Order, Seller shall maintain at its sole expense insurance per the Vendors Insurance Requirements. Seller shall furnish to HSY certificates of insurance evidencing that all required insurance coverage is in effect and otherwise complies with the requirements of this Order.

**22. RECORDS AND AUDITS:** Seller shall maintain complete financial records and accurate documentation relating to the performance of this Order during the performance of, and for three years after final payment under, this Order or longer if otherwise required by governmental authorities with jurisdiction over Seller. HSY or its designee has the right (but not the obligation) to audit and inspect Seller's records with respect to amounts invoiced to HSY and Seller's compliance with the provisions of this Order. This right extends for three years after final payment under this Order. If an audit or inspection reveals an error in the amounts charged to HSY or paid

to Seller, then an appropriate adjustment shall be made within 30 days by either Seller or HSY, as applicable. HSY shall pay for any audit or inspection unless such audit or inspection is conducted subsequent to Seller's default or overcharge, in which case Seller shall pay for all audit or inspection costs incurred by HSY. Seller shall pay all expenses incurred by Seller in supporting the audit and inspection.

**23. TERMINATION FOR CONVENIENCE:** HSY may terminate this Order, in whole or in part, at any time, effective immediately upon written notice to Seller or upon such later date as set forth in such notice. Seller shall discontinue work under this Order immediately upon the effectiveness of such termination and shall take all steps necessary to protect the work completed. At HSY's election, Seller shall deliver all or any portion of the Goods completed, with all warranties, or dispose of such Goods as HSY may reasonably direct. Upon such termination, Seller will be entitled to (a) the Price for all conforming Goods delivered and Services performed prior to such termination and (b) reimbursement of all reasonable, documented costs actually incurred by Seller prior to such termination in connection with the Services and Goods (except with respect to any Goods that are in Seller's standard stock). Seller will not be entitled to any unabsorbed overhead or lost profits with respect to any Services not performed or Goods not completed or completed but not delivered to HSY.

**24. TERMINATION FOR CAUSE:** HSY may terminate this Order, in whole or in part, effective immediately upon written notice to Seller or upon such later date as set forth in such notice, if Seller (a) fails to cure a breach of this Order within 10 business days of Seller's receipt of notice of such breach from HSY (with no cure period if such breach is incapable of cure); (b) gives HSY reasonable cause to doubt Seller's ability to deliver the Goods or perform the Services in accordance with the Schedule; (c) notwithstanding clause (a) of this Section 24, fails to deliver any Goods or perform any Services in accordance with the Schedule (unless excused as Force Majeure); or (d) suspends or ceases a material portion of its business activities, fails, or admits its inability, to pay its debts as they become due, files a voluntary petition in bankruptcy, is declared bankrupt, makes an assignment for the benefit of its creditors or suffers the appointment of a receiver or a trustee of its assets. Upon any such termination, HSY will have no further liability under this Order except (i) with respect to any non-termination portion and (ii) to pay for conforming Goods delivered and conforming Services performed prior to such termination.

**25. EFFECT OF TERMINATION:** Upon any termination of this Order, HSY shall have the right, but not the obligation, to purchase all or any portion of Seller's materials, work in process, finished Goods and tooling allocated to this Order (or terminated portion thereof) at the lesser of Seller's costs, or the fair market value, of such items.

**26. MISCELLANEOUS:** This Order will be governed by and subject to the laws of the Commonwealth of Pennsylvania without regard to conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods or any version thereafter shall not apply to this Order. No course of performance, course of dealing, or usage of trade shall be applicable to this Order. Any legal action arising under this Order or relating hereto shall be resolved exclusively in the state or federal courts located in Dauphin County or the Middle District of Pennsylvania, as applicable, and both parties hereby irrevocably consent to the exclusive jurisdiction of such courts for such actions. The word "including" and words of similar import as used in this Order shall mean "including, without limitation." Unless otherwise stated on the face

of this Order, all invoices and payment obligations under this Order will be in United States Dollars. All representations, warranties, indemnities, confidentiality obligations, rights and remedies of HSY and any other provision hereof that by its express terms or by implication is to survive will survive the termination or completion of this Order. Seller shall not assign, subcontract or otherwise delegate any of its rights or obligations under this Order without HSY's prior written consent. Any such purported assignment, subcontracting or delegation in violation of the foregoing shall be void, and in such event, HSY may immediately terminate this Order without payment or other penalty. Seller is an independent contractor for all purposes hereof, and nothing herein shall be deemed to constitute a partnership or joint venture between the parties. The contract evidenced by this Order is not intended to be one of hiring under the provisions of any workers' compensation or other laws and shall not be so construed. Each provision of this Order is severable and if any provision is found to be invalid, illegal or unenforceable for any reason, the rest of this Order will remain valid and enforceable. HSY's rights and remedies under this Order are cumulative and in addition to all other rights and remedies that may be available to HSY under this Order, at law and in equity. HSY's failure to enforce any provision of this Order will not prevent HSY from later enforcing such provision. If HSY waives Seller's breach of any provision of this Order, such waiver will not be deemed a waiver of a later breach of such provision. This Order binds the parties, as well as their legal representatives, successors and permitted assigns. Amendments to this Order shall be in writing and either signed by both parties or agreed to by both parties through SAP or other electronic system used by HSY. This Order and any Existing Agreement constitute the entire agreement of the parties concerning the subject matter of this Order and supersede any prior or contemporaneous agreements or understandings between the parties concerning the same subject matter.