

KELLOGG COMPANY STANDARD TERMS AND CONDITIONS

1. CONTRACT. This Purchase Order is the contract between Kellogg Company or any of its subsidiaries (“**Kellogg**”) and the seller, provider or other vendor (“**Supplier**”) of goods or services described in this Purchase Order (such goods or services referred to below as “**Goods**”). Kellogg objects to modifications, conditions and additions to any of the terms of this Purchase Order, irrespective of the wording of Supplier’s acceptance, invoice, shipping receipt, packing slip, other written material offer or proposal or by any other means (collectively “**Supplier’s Forms**”).

2. CHANGES. Kellogg reserves the right to change quantities, specifications, delivery dates, materials and other descriptions relating to the Goods. If such changes cause an increase or decrease in the cost or time required for Supplier’s performance, Supplier and Kellogg will negotiate an equitable adjustment.

3. PRICE AND TAXES. Unless expressly otherwise provided in this Purchase Order, the price includes any and all taxes, whether sales, use, excise or other, or fees, duties or other governmental impositions, whether or not the same are set forth separately on invoices to Kellogg. If Kellogg is required to pay any taxes or other fees relating to the services to be performed or to the production, sale or transportation of the Goods, Supplier will reimburse Kellogg for any such taxes or fees. Unless expressly otherwise provided in this Purchase Order, Kellogg will pay all undisputed invoices issued by Supplier for Goods within 120 days of receipt of each invoice.

4. ACCEPTANCE OF GOODS. Kellogg’s acknowledgement of receipt of the Goods will not constitute acceptance of such Goods or acknowledgement of the quantity of Goods shipped. Acceptance will occur only when Kellogg, after a reasonable opportunity to inspect and test the Goods, issues to Supplier a written notice of acceptance or incorporates the Goods into a product produced by Kellogg. If any portion of a shipment of Goods is found to not be in conformity with this Purchase Order, Kellogg may reject and return the entire shipment without further inspection; or Kellogg may, at its option, complete inspection of all Goods in the shipment and then reject and return any or all non-conforming Goods or accept them at a reduced price. Kellogg’s acceptance of any non-conforming Goods will not constitute a waiver of any requirements under this Purchase Order for Goods subsequently delivered. Any rejected Goods will be returned at Supplier’s expense, and Supplier will be liable to Kellogg for any other expenses incurred by Kellogg in connection with such Goods.

5. PACKING AND SHIPPING.

(a) Supplier will pack, mark and ship the Goods (i) in accordance with Kellogg’s policies and requirements pertaining (but not limited) to ingredient specifications, quality manuals, and security seals, (ii) in accordance with the requirements of all US Customs, Food & Drug, and other regulatory agency requirements and applicable common carriers and, (iii) when transportation costs are payable by Kellogg, in a manner to secure the lowest transportation cost. No charge will be made by Supplier for packing, boxing, drayage or storage unless otherwise stated in this Purchase Order.

(b) Unless otherwise stated in this Purchase Order, prices and delivery are “FOB Destination – Freight Prepaid.” All charges are included in the price and no extra charges of any kind will be allowed unless specifically provided in this Purchase Order.

(c) All risks of loss or damage in transit or delays en route will remain with Supplier until Kellogg’s receipt and acceptance of the Goods notwithstanding the FOB point stated on the reverse side hereof or any other terms in this Purchase Order. Kellogg will receive all Goods subject to its rights of inspection and rejection. Kellogg will not accept chemicals and materials subject to the OSHA Hazard Communication Act 1910.1200, unless Material Safety Data Sheets are provided with the shipment.

6. GENERAL WARRANTIES.

(a) Supplier warrants that all Goods will (i) be free from any liens or encumbrances, (ii) be free from defects in design, material, and workmanship, (iii) conform to specifications and accepted samples, (iv) be merchantable and, (v) if ordered for a stated purpose, be fit for such purpose. The warranties set forth in this Paragraph 6(a) or otherwise with respect to the Goods, are conditions to this Purchase Order and are in addition to all other warranties, expressed or implied and will survive any delivery, inspection, acceptance, or payment by Kellogg. All warranties will run to Kellogg, its successors, assigns, customers and any third party injured in person or property by reason of any breach of such warranties.

(b) Supplier warrants that any packaging materials or edible raw or finished materials sold by Supplier to Kellogg under this Purchase Order are, as of the date of shipment or delivery, not (i) adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act and all of its amendments, including, but not limited to, the Food Additive Amendment; (ii) materials which may not, under the provisions of Sections 404 and 505 of the Food Drug and Cosmetic Act, be introduced into interstate commerce; and (iii) adulterated or misbranded within the meaning of any food laws or ordinances (then in effect) of the state or city or country to which such material is shipped.

(c) All services provided by Supplier under this Purchase Order will be satisfactorily performed by Supplier to Kellogg’s specifications, drawings, samples, and any other description furnished or adopted by Kellogg. In the absence of exact specifications, all materials furnished will be of the highest grade and best quality, and the work will be performed in a professional and first-class manner best suited for its use and intended purpose. Supplier will re-execute, at its own cost and expense, any defective or unsatisfactory work that appears during progress of the work and will remedy and replace, at Supplier’s own cost and expense, any defects due to faulty materials or workmanship which appear within a period of one year from the date of acceptance of the completed work by Kellogg. The work will be at Supplier’s risk until it is accepted by Kellogg.

(d) Supplier will permit auditors of Kellogg to have access to facilities used to manufacture, pack or hold products or ingredients. The audit/inspection may include review of records, processes, controls and facilities which demonstrate that product meets specifications.

(e) Supplier warrants that no liens, encumbrances, security interests, or other third party claims will attach to real or personal property owned or leased by Kellogg as a consequence of Supplier’s performance of services.

(f) Supplier warrants that all Goods are at prices and terms lawful and permissible under the anti-trust laws and any other applicable official price control laws, orders and regulations.

(g) Kellogg objects to any disclaimer of warranty, fitness for a particular purpose, merchantability, freedom from defects, or other disclaimer of the terms and conditions of this Kellogg Order in Supplier's Forms.

7. BREACH. Any Goods not in accordance with any of the warranties set forth in this Purchase Order may, at Kellogg's election, be treated as a partial or total breach of contract, and Kellogg may avail itself of any and all remedies available to it including, but not limited to, (a) cancellation of the Purchase Order, in whole or in part; (b) rejection and return to Supplier, at Supplier's expense, all or any portion of the Goods previously shipped, whether defective or not and whether previously accepted or not, (c) replacement from other sources of the Goods; and (d) retention of Goods and repair thereof at Supplier's expense. In any such event, Supplier will be liable to Kellogg for the full amount of such damages as flow from its breach of contract and Supplier will not be entitled, in diminution of the same, to show that such procedures as Kellogg chose to follow upon such breach resulted in greater damages than might have ensued had Kellogg selected other available alternatives. One or more waivers (whether by non-enforcement, non-association or otherwise) of the breach of any condition, term or provision of this Purchase Order will not be construed as a waiver of a further, additional or continuing breach of the same or any other condition, term or provision of this Purchase Order.

8. CANCELLATION. If at any time Kellogg will reasonably determine that Supplier is, or is about to become, insolvent or bankrupt, then Kellogg may forthwith cancel this Purchase Order. Without limiting any right of cancellation for Supplier's breach or default, Kellogg reserves the right to cancel this Purchase Order, or any portion thereof, if, for any reason, delivery or performance is not made or cannot be made when specified, time being of the essence, and to charge Supplier for any resulting loss. Kellogg's right of cancellation includes the right to cancel future installments, if any, in the event of failure or delay in delivery or performance, if deemed by Kellogg to reasonably impair the value of the entire Purchase Order.

9. FORCE MAJEURE. In the event either party, through no fault of its own, is unable to perform hereunder due to an event that is beyond the non-performing party's reasonable control, such non-performance will be excused, provided that if any such event continues for more than 15 days, Kellogg may, at its option, cancel this Purchase Order and all its related obligations. Each party will promptly notify the other of any inability to perform and the cause of such non-performance.

10. TERMINATION. Kellogg may terminate this Purchase Order, in whole or in part, at any time due to Supplier's breach or for any reason by written notice, or verbal notice confirmed in writing, to Supplier. In the event Supplier is not in breach or default hereunder and Section 8 above does not apply, Supplier's sole remedy will be limited to recovery of its reasonable direct costs consisting of a percentage of the order price reflecting the percentage of work authorized and properly performed prior to notice of termination, and actual direct costs resulting from termination.

11. SPECIFICATION CHANGES. Kellogg may, at any time upon written notice to Supplier, make changes in the specifications, drawings, samples or other terms of this Purchase Order. If such change causes a material increase or decrease in the amount or character of the work to be done by Supplier, the goods to be delivered hereunder, or the time required therefor, and Supplier notifies Kellogg thereof within five days from the date of receipt of notice from Kellogg to make such change, the parties may agree to an equitable adjustment of the purchase price or the time for Supplier's performance. No claim for an adjustment in price will be valid unless such changes are specifically requested by Kellogg and the amount of the adjustment in price is specifically agreed to in writing by Kellogg.

12. INDEMNIFICATION. Supplier will indemnify, defend and hold harmless Kellogg, its subsidiaries, affiliates, successors, assigns, employees, agents, and customers from any and all claims, demands or other liabilities for suits, injuries, losses, damages, recall costs, or expenses (including attorney's fees) to persons or property in any way arising out of or resulting from a defect in the Goods or from any act, fault, or omission of Supplier, its agents, employees, or subcontractors in the performance of this Purchase Order, including, but not limited to: (a) actual or alleged adulteration or misbranding of product(s); (b) use or incorporation of any product(s) manufactured by Kellogg; (c) actual or alleged infringement of any United States or foreign patents, or any trademark or copyright; (d) performance of work and labor covered by this Purchase Order; (e) use of Kellogg's machinery and/or equipment by Supplier in the performance of the work called for by this Purchase Order; or (f) breach of any warranty or any other obligation hereunder. Kellogg objects to any limitation of liability in Supplier's Forms.

13. INSURANCE. During the term of this Purchase Order, Supplier will maintain at its own expense (a) Commercial General Liability Insurance, including products and completed operations coverage, with a combined single limit minimum of \$5,000,000, which may be increased at the request of Kellogg, (b) Automobile Liability Insurance, including coverage for hired, owned or non-owned vehicles, with a combined single limited minimum of \$1,000,000, and (c) Workers' Compensation Insurance (including Longshoremen's and Harbor Workers' Coverage, if applicable) at the statutory limits. Kellogg will be named in such liability policies as an additional insured. Supplier will furnish Kellogg with certificates of insurance issued by the companies providing the coverage and all such coverage and the related policies will be subject to Kellogg's approval for adequacy of protection.

14. WORK AND LABOR.

(a) Supplier will observe all laws, ordinances, rules and regulations of any government unit or agency affecting items furnished and/or the performance of work and labor covered by this Purchase Order. Before commencing any work hereunder, all contractors, subcontractors and vendors must review "Hazard Communication Compliance Manual" at the work site (location) and must provide the appropriate documents (Material Safety Data Sheets, etc.) for all hazardous materials as defined by current OSHA Hazard Communication Act 1910.1200 to be used, consumed or installed as part of this Purchase Order.

(b) Supplier will keep the premises of Kellogg free from accumulations of material or rubbish, and at the completion of work promptly remove the same from Kellogg's premises, together with Supplier's machinery, tools and equipment.

(c) Supplier, its contractors, subcontractors, materialmen, and all parties acting under it, agree that no construction claims or liens will be filed or maintained by it, them or any of them, for any services performed or materials provided in accordance with this Purchase

Order, and Supplier, for itself, its successors and other acting through or under it, waives and relinquishes the right to have, file, or maintain any construction claims or liens against the services, materials, or premises of Kellogg. Supplier will, nevertheless, furnish to Kellogg the standard forms of waiver of lien signed by Supplier and all contractors, subcontractors and materialmen who have furnished labor and materials hereunder.

(d) In the event Kellogg's machinery and/or equipment are used by Supplier in the performance of the work called for by this Purchase Order, such machinery and/or equipment will be considered as being under the sole custody and control of Supplier during the period of such use by Supplier and should any person or persons in the employ of Kellogg be used to operate said machinery and/or equipment during the period of such use, such person or persons will be deemed during such period of operation to be an employee or employees of Supplier.

15. CONFIDENTIALITY. In the event Kellogg disclosed to Supplier any confidential information, including that which may be disclosed verbally, in writing, or through observation of Kellogg's facilities, Supplier will not use such information for its own benefit or disclose Kellogg's confidential information to any third parties, except to the extent required by law and then only upon prior written notice to Kellogg. No information received by Kellogg in connection with negotiating and filling this Purchase Order will be deemed to constitute a trade secret, or to have been given in confidence to Kellogg.

16. OWNERSHIP. If any molds, dies, tools, special fixtures, jigs, patterns, models or the like, or any photographic negatives or printing artwork or plates, copyrightable material, patents, trademarks, or the like should be furnished by or on behalf of Kellogg, or by Kellogg to Supplier, then Supplier (a) will have no rights, property or interest in the same except to the extent necessary to perform under this Purchase Order, (b) will be responsible for maintaining the same in proper working order subject only to normal wear and tear where applicable; and (c) upon completion of work pursuant hereto, will promptly account to Kellogg for any and all such items and make such disposition thereof, including any assignments and releases, as Kellogg directs.

17. LAWS AND REGULATIONS.

(a) Supplier will comply with all federal, state, local and, where applicable, foreign laws, regulations and executive orders. If required, Supplier will so certify when and in such form as Kellogg may require, including a certification that the goods and services were produced and rendered in compliance with all applicable requirements of the Fair Labor Standards Act.

(b) Supplier will comply with all applicable commercial and public anti-bribery laws, including, without limitation, the US Foreign Corrupt Practices Act. In addition, to the extent Supplier is deemed to be a U.S. federal contractor or covered subcontractor under applicable federal procurement laws, Supplier will comply with the following (each of which is incorporated in this Purchase Order by reference): (i) Executive Order 11246 as amended and all regulations promulgated pursuant to that Executive Order including but not limited to the provisions of paragraphs (1) through (7) of the "Equal Opportunity Clause" (41 CFR 60-1.4(a)), (ii) Section 503 of the Rehabilitation Act of 1973 including the applicable parts of the affirmative action clause entitled "Affirmative Action for Handicapped Workers" (41 CFR 60-741.4), (iii) the Vietnam Era Veterans Readjustment Assistance Act (30 USC §2012) including the applicable parts of the affirmative action clause entitled "Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era" (41 CFR 60-250.4), and (iv) Executive Order 13496 "Notification of Employee Rights Under Federal Labor Laws" (29 CFR Part 471, Appendix A to Subpart A).

18. ENTIRE AGREEMENT; GOVERNING LAW. This Purchase Order constitutes the final expression of agreement between Supplier and Kellogg with respect to the purchase and sale of the Goods, and is a complete and exclusive statement of the terms of this Purchase Order, superseding all other oral or written agreements, or communications by or between Supplier and Kellogg. The internal laws of the State of Michigan will govern this Purchase Order. Supplier consents and submits to the exclusive jurisdiction of the state or federal court sitting in the State of Michigan with respect to any action related to this Purchase Order or the Goods. Each of Kellogg and Supplier waives any right it may have to a jury trial with respect to any dispute arising out of or related to any Goods or this Purchase Order. The United Nations Convention on the International Sale of Goods does not apply to the transactions contemplated by this Purchase Order.

19. ASSIGNMENT AND SUBCONTRACTING. Supplier may not assign or subcontract its obligations under this Purchase Order and may not assign any present or future right to receive payment under this Purchase Order without the prior written consent of Kellogg.

20. SUPPLIER CODE OF CONDUCT. Supplier will comply at all times during the performance of its obligations under this Purchase Order with the terms of the Kellogg Supplier Code of Conduct which can be viewed [HERE](#).