

FERRARA CANDY COMPANY PURCHASE ORDER TERMS & CONDITIONS OF PURCHASE (INTERNATIONAL)

These Terms and Conditions and any terms and documents referred to on the face or back hereto constitute the entire agreement (the "Purchase Order") between Ferrara Candy Company ("Buyer") and Company ("Seller") that provides the products and/or services ("Products" or "Services" respectively).

1. SHIPPING AND BILLING. Title to the Products and all risk of loss during shipment, and if shipped from a point outside the United States during shipment and until approval by the United States Governmental Department or Agency having jurisdiction, shall be in Seller irrespective of F.O.B. point or other terms. If shipment is from a point outside the United States of America, Seller shall comply fully with all applicable customs laws and regulations, including without limitation in regard to valuation for duty, etc. Seller must identify the delivering carrier on the bill of lading and follow Buyer's routing instructions unless: (1) lower transportation charges would result from following other routing instructions or (2) deviation is necessary to protect transit or lowest rate making route. Excess transportation or other costs resulting from any other deviation must be paid by Seller. Buyer shall place Seller's name and Buyer's purchase and shipping order numbers on all invoices, packages, shipping documents, and correspondence. All material shall be suitably packed, marked, and shipped in accordance with the Buyer's instructions, or in the absence of such instructions, in accordance with the requirements of common carriers in a manner to secure lowest transportation costs, and no additional charge shall be made to the Buyer therefor unless otherwise stated herein. Seller is required to place a seal on all full truckload, piggyback, railcar, and tanker shipments. All delivery units and truckload quantities must be secured at all times prior to unloading at its destination with serially numbered high security seals. Suppliers of commodities, Products, and/or Services shall be responsible for placing a seal(s) on all doors, hatches, vents, or other points of entry of each transportation conveyance upon completion of loading or servicing. Seals shall be serially numbered. Seller must maintain a record of each seal number. Additionally, Seller must ensure that the applicable seal identification number is on each bill of lading, shipment manifest, certificate, or other delivery documents. Loading of the conveyance must be in accordance with good commercial practices and the sealing must be done at origin by Seller. Truckload shipments which arrive at destination with broken, missing, or unreadable seals may be rejected, and Seller will be liable as if there had been a total loss of the shipment.

2. ACCEPTANCE OF PURCHASE ORDER: This Order expressly limits acceptance to the terms stated herein. Any additional or different terms proposed by Seller are objected to and rejected; however, such proposals shall not operate as a rejection of this Order, even if Seller purports to condition its acceptance of this Order on Buyer's agreement to such additional or different terms. The manufacture or delivery of Products or the performance of Services described on the face hereof will constitute an acceptance by Seller of this Order and all terms and conditions contained herein. By manufacturing the Products or performing the Services, Seller waives any and all terms and conditions of its proposal, quotation, acknowledgment or other form which are inconsistent with the terms and conditions contained in this Order. Buyer reserves the right to reject any articles or materials not in accordance with warranties or shipped contrary to shipping instructions, and to return same at Seller's risk and expense, with all handling and incoming and outgoing transportation charges for Seller's account. Unless otherwise stated, Buyer's count/weight will be accepted. Articles or materials returned are not to be replaced except on written instructions from Buyer. Failure to give notice of defects to Seller shall not constitute a waiver of breach of warranty or any other condition.

3. DELIVERY: TIME IS OF THE ESSENCE. In accepting this Order, Seller agrees to perform and make deliveries as required hereby. Deliveries are to be made both in quantities and at times specified in schedules furnished by Buyer and shall not be excused by Seller's inability to obtain materials, supplies, or labor from its usual sources. Substitutions will not be accepted. If Seller fails to make shipment as per time specified herein, or if no time is specified within five days of receipt of shipping order, Buyer reserves the right to refuse any Products and cancel this order, and any advance payments shall be returned to Buyer within 5 days. Buyer will have no liability for payment for materials or Products delivered to Buyer which are in excess of quantities specified in the delivery schedules. Buyer may from time to time change delivery schedules or direct temporary suspension of scheduled shipments. Buyer may cancel any portion of this order which remains unfilled after the beginning of any bankruptcy proceedings by or against Seller or after the appointment of any assignee for the benefit of Seller's creditors or of a receiver. Buyer's partial payments to obtain discounts, payment for, or acceptance of all or any part of the order shall not bind Buyer to accept future shipments nor deprive it of the right to cancel or to return at Seller's expense all or any portion of the Products because of a failure to conform to order, or by reason of defects, latent or patent, or any other breach or warranty, or to make any claim for damages, including manufacturing cost and other consequential and special damages occasioned by Buyer. Such rights shall be in addition to any other remedies provided by law.

4. INSPECTION/ACCEPTANCE OF PRODUCTS: Buyer agrees to inspect the Products upon arrival and in event of nonconformity of the Products or tender of delivery, to exercise its right of rejection not later than 120 days after receipt of the Products. Notification of rejection shall be made in writing by Buyer to Seller. Buyer agrees on rejection to comply with reasonable written instructions of Seller regarding the disposition of the rejected Products. In the event that expenses are incurred in following such instructions, including, without limitation, maintenance, storage, or transportation of the Products, then Seller shall indemnify Buyer thereon and advance such expenses to Buyer prior to Buyer's complying with Seller's instructions or incurring any such expenses. Buyer may reject the Products if the tender or delivery fails in any respect to conform to the terms and conditions of this Order. In the event of such non-conformance, Buyer may, at its option: (a) reject the whole, or (b) accept the whole or (c) accept any conforming unit or units and reject the rest. The exercise of any of the above options shall be "without prejudice" and with full reservation of any rights and remedies of Buyer attendant upon breach as provided by the UCC or any other applicable law.

5. WARRANTIES: Seller warrants that for the period of one year or such other period specified on the face of this Order following acceptance that the Products shall: (a)(i) be free of any defects in design, materials, and workmanship, and shall conform and perform in accordance with the description, specifications, and sample of this Order whether furnished by Seller or specified by Buyer; (ii) be fit for the purposes intended; (iii) be of merchantable quality; (iv) not be adulterated or misbranded; (v) be free of any liens and encumbrances; (vi) not contain any "hazard requiring a preventive control," as that term is defined in 21 C.F.R. § 117.3, that has not been significantly minimized or prevented unless Seller notifies Buyer otherwise in writing prior to the receipt of Products by Buyer; and (vii) Buyer reserves the right to reject and/or return Products which, at time of shipment by Seller (a) in the case of Products with a remaining shelf life, do not have a remaining shelf life of at least 70%, (b) do not comply with applicable quality standards set forth herein, or (c) are damaged or unsellable, all strictly as a result of acts or omissions of Seller. Buyer agrees to take possession of all Products at the time they are delivered without defect. Any cost associated with Products being damaged after delivery by Seller to Buyer shall not be Seller's responsibility. All reasonable direct costs associated with rejecting the nonconforming Products shall be borne solely by Seller, including, without limitation, all reasonable, direct costs incurred by Buyer with respect to the transportation and handling, delivery and return of nonconforming Products. As soon as is reasonably possible, Seller shall, at its expense, cause the removal of the Buyer from each such delivery location or request Buyer to dispose of such Products all in strict accordance with applicable law and consistent with good industry practices. At Buyer's option, Seller will cause the delivery location to either replace the nonconforming Products with Products conforming to the terms of this Agreement or respectively reimburse or give Buyer full credit for the respective price paid for such nonconforming Products and any other reasonable, direct expenses respectively incurred

by Buyer in connection with the nonconforming Products. Additionally, if material furnished contains one or more manufacturer's warranties, Seller hereby assigns such warranties to Buyer and Buyer's customers. Products not meeting the warranties will, at Buyer's option, be repaired, adjusted, or replaced by Seller at no cost to Buyer or Buyer's customers. Costs of remedying noncompliance with the requirements of this Section 5 and/or any liability arising therefrom shall be borne by Seller. (b) In the case of Products which are food, drugs, devices, or cosmetics, or are to be used in or as packaging or labeling for such Products, or in Buyer's edible Products, Seller expressly warrants that the Products are wholesome and fit for human consumption or fit for contact with food or edible Products, and are not adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or under any other applicable law or regulation, are not articles which may not under Sections 404 or 405 of said Act be introduced into interstate commerce, and are manufactured in a facility or under conditions which are free of contamination, microbiological or otherwise, which undermines the merchantability of the Products or places such Products in noncompliance with any law, rule, or regulation. (c) Seller warrants that with regard to any packaging materials used in the packaging of the Products or any Products intended to be used in packing Buyer's Products such materials or Products are, or will be when used, incapable of causing hazard to health or any significant taint of taste or microbiological or other contamination which undermines the merchantability of the Products. (d) Seller further warrants that the Products shall be and are odor free and have no taste or flavor that is transferable to any food or edible product packaged with the materials. (e) Seller warrants that in performing its obligations under this Order it shall comply with all laws and regulations applicable to a manufacturer and supplier of Products and Services of the type covered by this Order. (f) These warranties shall be in addition to all other warranties, express, implied, or statutory. Payment for, inspection of, or receipt of items or Services shall not constitute a waiver of any breach of warranty. (g) These warranties shall survive any inspection, delivery, and acceptance of the Products or Services or payment by Buyer for the Products or Services. It is understood that all warranties created by this Agreement shall be cumulative.

6. NO BROKER: Seller hereby acknowledges that no third person or entity has acted as a broker on its behalf in connection with Buyer's purchase of the Products as set forth herein. However, if Seller does utilize a broker, Seller hereby expressly agrees that it shall be responsible for any and all fees and commissions owed to or claimed by any such broker (or any other entity), related to or arising out of this or any related transactions between the parties (including without limitation, any future purchase of Products by Buyer). In connection therewith, Seller hereby agrees to indemnify and hold Buyer and its related and affiliated entities and their respective officers, directors, employees, successors, and assigns harmless from and against any claims, causes of action, damages, losses, and expenses arising out of or related to any claim brought by such broker or any other person or entity claiming entitlement to a fee or commission (whether as a broker, finder, salesperson, or otherwise) through Seller and in connection with any sale or purchase of the Products by Buyer.

7. APPLICABLE LAW; DISPUTE RESOLUTION: All matters regarding the construction, interpretation, and performance of this Order shall be governed by the laws, excluding the rules relating to the choice of law, of the State of Illinois. The United Nations Convention on the International Sale of Products shall not apply to this Order. Seller agrees that any action or proceeding arising out of or relating to this Order shall be settled by binding arbitration in Chicago, Illinois under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with such rules. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief without breach of this arbitration provision.

8. PRICE/ MOST FAVORED CUSTOMER: (a) Seller warrants that the prices, payment terms, and other terms and conditions stated for the Products and Services covered by this Order are not less favorable than prices, payment terms, or other terms and conditions accorded to Seller's most favored customer for like items in similar quantities. If Seller accords to any other customer of Seller more favorable net prices, payment terms, or other terms and conditions for the Products and Services which are substantially comparable to those sold to FCC hereunder, Seller shall extend such prices, payment terms, and other terms and conditions to FCC. (b) If no price is indicated on the face of this Order, the price shall be the market price at the time of delivery or the price at which the materials or Services were last sold to Buyer, whichever is less. Unless otherwise specified in the Order, the prices set forth in this Order include all charges for duties, customs, tariffs, or other government-imposed surcharges, as well as packing, transportation, and storage to the F.O.B. point.

9. CHANGES: Buyer shall have the right at any time, by written Order of an authorized contracting official of Buyer, to make changes to this Order including, but not limited to changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost or time required for performance, an equitable adjustment will be made and this Order will be modified in writing accordingly, provided that Seller submits its claim for adjustment in writing within thirty (30) calendar days after receipt of the written change order. However, nothing in this paragraph shall excuse Seller from proceeding with the purchase order as changed.

10. TERMINATION FOR CONVENIENCE OF BUYER: (a) Buyer reserves the right to terminate this Order or any part of it for Buyer's sole convenience. In the event of such termination, Seller shall immediately stop all work hereunder and shall immediately cause any of its suppliers or contractors to cease such work. Buyer's liability to Seller with respect to such terminated work shall be limited to: (i) Seller's purchase price of all components not usable in Seller's or Seller's subcontractor's other operations or marketable to Seller's other customers, plus (ii) the actual costs incurred by Seller in procuring and manufacturing material not usable in Seller's or Seller's subcontractor's other operations. Seller shall not be paid for any work done after receipt of notice of termination, or for any costs incurred by Seller's suppliers or subcontractors, which Seller could reasonably have avoided. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Buyer may have as a result of default by Seller. (b) In no event shall Buyer be liable for anticipated profits or incidental, special, indirect, or consequential damages or lost profits. Buyer's liability on any claim, of any kind, for loss or damage arising out of or in connection with, or resulting from this Order, or from the performance or breach thereof, shall in no case exceed the price allocable to the Products or Services, or unit thereof, which gives rise to the claim. Buyer shall not be liable for penalties of any description. Any action resulting from any breach on the part of Buyer as to the Products or Services delivered hereunder must be commenced within one year after the date of this Order.

11. TERMINATION FOR CAUSE: Buyer may also terminate this Order or any part of it in the event of any default by Seller, or if Seller fails to comply with any of the terms and conditions of this Order. Late deliveries, deliveries of Products which are defective or which do not conform in any respect to the requirements stated in this Order, or failure to provide Buyer, upon request, with adequate assurances of future performance, or in the event that Seller becomes insolvent, or there is filed by or against Seller a petition in bankruptcy, reorganization, or other insolvency proceeding, shall be causes permitting Buyer to terminate this Order for cause. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination. If it should be determined that Buyer has improperly terminated this Order for cause, such termination shall be deemed a termination for the convenience of Buyer.

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12. TITLE AND RISK OF LOSS: Notwithstanding Section 1, title to Products purchased under this Order shall pass to the Buyer upon delivery of the Products to the F.O.B. point, unless otherwise specified herein. If the Products ordered call for additional Services such as installation and the like, or if the Products must meet operating specifications, then the risk of loss shall not pass to Buyer until the Services are performed or the Products achieve the operating specifications. Notwithstanding anything herein to the contrary, all raw, in-process, and finished materials will be clearly marked as the property of FCC, with the applicable Purchase Order or Contract number as soon as they come into existence. In addition, Seller will assure that all molds, tooling, equipment, or the like loaned to it by FCC are similarly marked.

13. BUYER INFORMATION; INVENTIONS: Unless expressly agreed to in writing, all Buyer information disclosed by Buyer to Seller or to which Seller may otherwise obtain access in contemplation of or in the course of performance of this Order, including without limitation this Order itself, shall be maintained in confidence by Seller and shall remain Buyer's property. Such information shall not be disclosed to third persons without prior written consent of Buyer and shall not be used for any purposes other than the performance of this Order. When Seller is required by Buyer to execute a Non Disclosure Agreement, Seller shall assure that all Seller employees and authorized third parties that receive information pursuant to such agreement shall execute a Non Disclosure Agreement no less restrictive than the Non Disclosure Agreement executed by Seller. All copies of such information shall be promptly returned to Buyer at Buyer's request. If this order relates to procurement of, or work on, machinery or equipment differing in structure or mode of operation from any item previously made by Seller, Seller agrees that every invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice in filling this Order, or in the performance of any research, design, or development work relating to the subject matter of this Order and which was done at the request of Buyer, shall be the sole property of Buyer. Seller shall keep such inventions, improvements or discoveries in strictest confidence and shall neither use nor divulge any information relative thereto to anyone without Buyer's written consent. Seller shall not in any advertising, sales promotion materials, press releases, or any publicity matters use the name of Buyer, any affiliate, or subsidiary of Buyer, or any variation or language from which the connection of said names may be implied without Buyer's prior written approval.

14. INDEPENDENT CONTRACTOR/COMPLIANCE WITH LAWS: All Products, work or Services provided by Seller or Seller's subcontractors pursuant to this Order shall be as an independent contractor and not as an agent of Buyer. All persons furnished by Seller are so furnished as Seller's employees or agents, and in the performance of the requirements of this Order Seller shall give all stipulations, representations, and certificates required by and be responsible for compliance with all executive orders, laws, rules, and regulations Federal, State, and local. Seller agrees to indemnify and hold harmless and defend Buyer against any claims or lawsuits arising out of Seller's failure to comply with any such laws, rules, or regulations.

15. INDEMNIFICATION AND INSURANCE: Seller agrees to defend, hold harmless, and indemnify (including reasonable attorneys fees and costs) Buyer, its customers, affiliates, divisions, or wholly owned subsidiaries, and any employee or agent thereof (hereinafter collectively referred to as "Indemnitees"), against all liabilities, claims, losses, expenses (including reasonable attorneys' fees), or demands arising out of or in connection with (i) injuries to Seller's or Buyer's agents, servants, employees, or representatives (collectively, "Representatives") of every nature and description except those arising out of Buyer's negligence; (ii) Seller's breach of its representations or warranties hereunder; (iii) damage to the property of any person caused by Seller or its Representatives; or (iv) infringement of copyrights, patents, trade secret, trademarks or other intellectual property rights based upon the use of Products furnished by Seller under this Order or Seller's performance of this Order. Seller shall, prior to commencement of performance, transmit to Buyer a certificate of insurance affirming that Seller has the following types of insurance and minimum coverage amounts: (1) Worker's Compensation and related insurance and/or bonds required by the law of the State in which the work is to be performed; (2) Employer's liability insurance with limits of \$1,000,000 per occurrence; (3) Commercial General Liability Insurance including contractual liability, product liability, and blanket contractual liability for both personal and property damage in the amount of \$2,000,000; (4) If the use of vehicles is required, Automobile liability, including non-owner automobile liability for both bodily injury and property damage in the amount of \$2,000,000 combined single occurrence. The certificate of insurance shall name Indemnitees as an additional insured and contain a clause that the policy cannot be changed or materially altered without at least thirty (30) days advance notice to Buyer. At Buyer's request, Seller shall maintain greater coverage amounts and other types of insurance. In case of failure to furnish said policies and/or certificates of insurance, or cancellation of any required insurance, Buyer may terminate this order.

16. MISCELLANEOUS: Buyer reserves the right to cancel or to suspend shipment of articles or performance of work covered by this Order in the event of fire, strike, riot, government restrictions, or any other cause reasonably beyond its control. In the event that Seller's performance is delayed for a period of ten (10) or more days, the Buyer may elect to cancel this Order at no cost to the Buyer other than for Products accepted and for which payment has not yet been received by Seller. If Buyer delays delivery or acceptance pursuant to any of the reasons set forth in this Section, Seller shall hold such Products at the direction of Buyer and shall deliver them when the cause affecting the delay has been removed. Buyer shall only be responsible for Seller's direct additional costs in holding the Products or delaying performance of this Order at Buyer's request. The failure of Buyer to claim a breach of any term, privilege, or condition of this Order or failure to enforce any of the provisions on one or more occasions, or any course of dealings of the parties, shall not be construed as a waiver by Buyer of any subsequent breach of such terms, rights, privileges, or conditions hereunder. All claims for money due or to become due from Buyer shall be subject to deduction or set-off by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller. In the event that this Order is issued under a blanket contract, the terms and conditions of the blanket contract shall supersede those contained herein. Paragraph headings are provided for convenience and shall not be used to interpret this Order. In the event that one or more of the provisions contained in this Order shall for any reason be held to be unenforceable in any respect under the laws of the jurisdiction governing this Order, such unenforceability shall not affect any other provision of this Order, but this Order shall then be construed as if the unenforceable provision or provisions shall have never been present in this Order. This Order and any instructions, schedules, exhibits, specifications or other documents provided by Buyer to Seller in connection with this Order constitute the entire agreement of the parties, and supersedes any prior agreements or understandings (oral or written) regarding this Order and shall not be modified or rescinded except by a writing signed by duly authorized representatives of the parties. None of the terms and conditions contained in this Order may be added to, modified, superseded or otherwise altered; nor shall any agreement or other understanding purporting to modify the terms and conditions hereof be binding upon Buyer unless otherwise agreed to by Buyer in writing on or subsequent to the date of this Order. Seller shall not subcontract or assign any right or interest under this Order (except monies due or to become due) nor delegate any obligations under this Order without the express written consent of Buyer. Any such attempted assignment or delegation by Seller shall be void and ineffective. Each shipment received by Buyer from Seller shall be deemed to be accepted only upon the terms and conditions contained herein, and no terms or conditions in any quotation, confirmation or acknowledgment heretofore, or hereafter sent by Seller, additional to or different from those set forth in this Order shall apply notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.