

WORLD'S FINEST* CHOCOLATE - TERMS AND CONDITIONS OF SALE

1. **AGREEMENT AND MODIFICATIONS.** The agreement between Seller and Buyer (the "Sales Contract") with respect to the sale of goods described on the World's Finest Chocolate - Order Form (the "goods") will consist exclusively of these Terms and Conditions of Sale and the terms appearing on the World's Finest Chocolate - Order Form (the "Order Form"). Buyer's order will not be binding upon Seller until Seller accepts the order by issuing a separate written order confirmation to Buyer. The Sales Contract will be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller will not be binding on Seller to the extent they modify, add to or detract from the Sales Contract. The Sales Contract terminates and supersedes any prior agreement or understanding between Buyer and Seller relating to the goods. No provision of the Sales Contract may be modified or waived except in a writing signed by Seller, and there are no representations, promises, agreements, warranties or undertakings relating to the goods other than those appearing in these Terms and Conditions and on the Order Form.
2. **PRICE AND PAYMENT.** The price of the goods sold pursuant to the Sales Contract will be the price appearing on the Order Form. Shipping and fuel surcharges, if applicable, will be added to Seller's invoice in the amount appearing on the Order Form and paid by Buyer. Any sales tax that Seller may be required to collect or pay upon the sale of the goods or upon any shipping charge or fuel surcharge invoiced to Buyer will be added to Seller's invoice and paid by Buyer. Payment terms will be net 30 days from the date of Buyer's receipt of the goods. Buyer will use Seller's invoice remittance form when making payment. Seller may assess a charge at the rate of 1-1/2% per month or the highest rate permitted by law, whichever is lower, on any past due amounts. Buyer will reimburse Seller for any expenses incurred by Seller, including attorneys' fees, in collecting any past due amount. If the Sales Contract is for more than one unit of goods, Seller may ship the goods in a single lot or in several lots at Seller's discretion, and each such shipment will be paid for separately. Seller may at any time or times, suspend performance of the Sales Contract or require payment in cash, security or other adequate assurance satisfactory to Seller when, in Seller's opinion, the financial condition of Buyer warrants such action.
3. **TAXES.** In addition to the price of the goods, Buyer will pay to Seller all sales taxes and other governmental charges that apply to the sale and delivery of the goods unless Buyer has furnished Seller with valid tax exemption certificates acceptable to the appropriate taxing authorities before Seller ships the goods.
4. **DELIVERY AND QUANTITIES.**
 - a. Estimated delivery date is approximately three (3) business days from the date Seller accepts Buyer's order for goods that are in Seller's stock, and approximately three to four weeks from the date that Seller accepts Buyer's order for personalized goods. Estimated delivery dates for goods in stock when the order is placed are subject to prior sales. Delivery dates are not guaranteed but are estimated based on the absence of delays directly or indirectly resulting from or contributed to by circumstances beyond Seller's reasonable control.
 - b. Delivery of goods will be by common carrier selected by Seller. Seller will ship the goods to the address appearing on the Order Form and will not be responsible if such shipping address is incorrect. Seller will not ship to a post office box. Goods will be carried inside the delivery location only if "Inside Delivery" is requested by Buyer on the Order Form and Seller expressly confirms such special delivery arrangements in Seller's separate written order confirmation to Buyer. Buyer is responsible for ensuring that Buyer or its representative is present when the goods are delivered to receive, inspect and count the goods upon receipt. Buyer will inspect the goods immediately upon receipt. Buyer must make any claim for shortage or shipping damage by noting such shortage or damage in writing on the bill of lading at the time the goods are delivered to Buyer.
5. **RETURNED GOODS.** Goods may be returned only for credit and only if Seller in its sole discretion authorizes such return within 60-days after the goods were delivered to Buyer. Goods must be returned only in unopened cases. If Seller so authorizes any such return, Buyer will bear the costs of returning the goods to Seller and assume all risk of loss or damage to the returned goods until actual receipt by Seller.
6. **WARRANTY.** Seller warrants to Buyer that the goods will be free from material defects at the time of shipment. No agent, employee or representative of Seller has any authority to bind Seller to any other warranty, representation or promise concerning the goods, and any such representation, promise or warranty has not formed a part of the basis of the bargain and will be unenforceable. Seller's sole obligation under the foregoing warranty is limited to either, at Seller's option, replacing the defective goods or refunding the purchase price paid by Buyer for such goods, and Buyer's exclusive remedy for breach of such warranty will be enforcement of such obligation of Seller. Any claims for allegedly defective goods must be made within five (5) days after Buyer learns of such alleged defect, but in no event later than thirty (30) days after Buyer's receipt of the goods. Any claims not made in writing and received by Seller within such period will be deemed waived. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
7. **REMEDIES AND LIMITATION OF LIABILITY.** If Buyer claims Seller has breached any obligation under the Sales Contract, whether of warranty or otherwise, Seller may request the return of the goods and tender to Buyer, at Seller's option, replacement goods or the purchase price paid by Buyer for such goods. If Seller so requests the return of the goods, the goods will be redelivered to Seller in accordance with Seller's instructions and at Buyer's expense. If Seller so determines, a refund of the purchase price paid by Buyer will be made only upon actual receipt of the goods by Seller. Except as herein provided, Seller will have no further obligation under the Sales Contract. The remedies contained in this paragraph and paragraph 6 hereof will constitute the sole recourse of Buyer against Seller for breach of any obligation under the Sales Contract, whether of warranty or otherwise. **IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, NOR WILL SELLER'S LIABILITY ON ANY CLAIM FOR DAMAGES ARISING FROM OR RELATING TO THE SALES CONTRACT OR THE SALE, DELIVERY OR USE OF THE GOODS EXCEED THE PURCHASE PRICE OF THE GOODS.**
8. **FORCE MAJEURE.** Seller will not be liable for any failure or delay in performing any of its obligations under the Sales Contract if such failure or delay is caused in whole or in part by anything beyond the reasonable control of Seller or Seller's suppliers, including but not limited to any acts of God, acts of Buyer, government acts or regulations; embargoes; fires, accidents; explosions, strikes; or other labor disputes; earthquakes, storms; judicial action; floods; war (whether an actual declaration thereof is made or not); sabotage; riot, terrorism; transportation delays; or lack of or inability to obtain labor, fuel or supplies. If any such event occurs, Seller may allocate goods and deliveries among its customers.
9. **ASSIGNMENT AND DELEGATION.** No right or interest in the Sales Contract may be assigned by Buyer without Seller's prior written consent, and no delegation of any obligation owed, or of the performance of any obligation, by Buyer may be made without Seller's prior written consent. Any attempted assignment or delegation will be void and ineffective for all purposes unless made in conformity with this paragraph.
10. **INTELLECTUAL PROPERTY.** If Buyer furnishes labeling specifications to Seller, Buyer will hold Seller harmless against any infringement or similar claims which arise from Seller's compliance with such specifications.
11. **HEADINGS.** Paragraph headings used in the Sales Contract are solely for ease of reference and will not control the meaning or interpretation of any provision.
12. **CHANGES.** Seller may, at any time, without notice, make changes in any catalog goods, and may discontinue the sale of any goods, all in its sole discretion, without incurring any obligation of any kind as a result thereof, whether for failure to fill an order of Buyer or otherwise.
13. **SEVERABILITY.** If any provision of the Sales Contract is declared or held void or invalid by a court of competent jurisdiction, such provision will be deemed severed from the Sales Contract and the other provisions of the Sales Contract will remain in full force and effect.
14. **GOVERNING LAW AND LIMITATION.**
 - a. The Sales Contract will be deemed to have been made at Chicago, Illinois, and the rights, duties and obligations of the parties will be governed by, and the Sales Contract, will be interpreted in accordance with, the laws (other than the choice of law provisions) of the State of Illinois. Buyer agrees that any state or federal court located within Cook County, Illinois, will have exclusive jurisdiction over any dispute that may arise from or relate to the Sales Contract. Buyer waives any objection based on *forum non conveniens* and any objection to venue of any action instituted hereunder, and consents to the granting of such legal or equitable relief as is deemed appropriate by any such court.
 - b. Any action for breach of the Sales Contract must be commenced within one (1) year after the cause of action has accrued, and all such claims will be barred thereafter notwithstanding any statutory period of limitations to the contrary.
15. CHI\6015328.3