

# JELLY BELLY CANDY COMPANY (THAILAND) LTD. PURCHASE ORDER TERMS & CONDITIONS OF PURCHASE

These Terms and Conditions and any terms and documents referred to on the face or back hereto constitute the entire agreement (the "Contract") between Jelly Belly Candy Company (Thailand) Ltd. ("Buyer") and company ("Seller") that provides goods and services purchased and sold hereunder ("Goods" and/or "Services", respectively).

**1. SHIPPING AND BILLING.** Title to the Goods and all risk of loss during shipment shall be in Seller irrespective of F.O.B. point or other terms. 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: (a) lower transportation charges would result from following other routing instructions or (b) 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 therefore 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, Goods, 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 Contract 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 Contract, even if Seller purports to condition its acceptance of this Contract on Buyer's agreement to such additional or different terms. The manufacture or delivery of Goods or the performance of Services described on the face hereof will constitute an acceptance by Seller of this Contract and all terms and conditions contained herein. By manufacturing the Goods 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 Contract. 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 the order from Buyer, 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 (5) days of receipt of shipping order, Buyer reserves the right to refuse any Goods and cancel its order, and any advance payments shall be returned to Buyer within five (5) days. Buyer will have no liability for payment for materials or Goods 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 that remains unfulfilled 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 Goods 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 GOODS.** Buyer agrees to inspect the Goods upon arrival and in event of nonconformity of the Goods or tender of delivery, to exercise its right of rejection not later than one hundred twenty (120) days after receipt of the Goods. 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 Goods. In the event that expenses are incurred in following such instructions, including, without limitation, maintenance, storage, or transportation of the Goods, 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 Goods if the tender or delivery fails in any respect to conform to the terms and conditions of this Contract. 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 applicable law.

**5. WARRANTIES.** (a) Goods. All Goods are subject to Buyer's final inspection, test, and approval after delivery to Buyer and, if not satisfactory or in accordance with specifications may, at Buyer's option, be rejected in whole or part by Buyer and returned at Seller's expense for transportation both ways or held for disposition at Seller's risk and expense. All Goods are warranted: (i) to conform to Buyer's specifications, drawings, and samples and all other descriptions furnished or adopted by Buyer and (ii) to be fit for the purpose represented by Seller, merchantable, of highest quality and workmanship, free from all latent and patent defects, owned solely by Seller, and free of all liens, security interests, or other third-party claims. Each shipment which is rejected by Buyer for any reason shall be replaced promptly by Seller if so directed by Buyer. (b) Services. All Services shall be satisfactorily performed to Buyer's specifications, drawing, and samples and to each other

description furnished or adopted by Buyer. Seller also warrants that no liens, security interests, or other third-party claims shall attach to real or personal property owned or leased by Buyer relating to the Goods or performance of the Services. (c) Goods and Services. For all Goods and Services, Seller shall be responsible for all defects in design, manufacturing, workmanship or materials which may become apparent within twelve (12) months from the later of (i) receipt by Buyer or (ii) where the defect is not apparent from reasonable inspect, discovery by Buyer. (d) Warranties By Law. The foregoing warranties and other warranties in this Contract are in addition to all other warranties pursuant to law. (e) Notice of Breach. Buyers failure to give notice to Seller of any breach of warranty shall not discharge Seller's liability for such breach.

**6. FOOD MATERIALS GUARANTEES.** If the Goods are agricultural commodities, food articles, food ingredients, or food packaging (collectively, "Food Materials"), the Goods are hereby guaranteed, as of date of shipment and delivery to Buyer's facility or each location designed by Buyer ("Facility"): (a) not to be adulterated or misbranded under applicable law; (b) to meet all conditions or specifications; (c) to be of the grade and to be suitable for feeding to humans; (d) to be free of insect damage, rodent, and/or bird infestation, mold damage, excreta, and objectionable odor; and (e) to have a remaining shelf life of at least 70%. Buyer shall determine whether the Food Materials meet the requirements of this Contract. Acceptance by Buyer of a draft for the purchase of any Food Materials shall not waive the right to reject any shipment(s) thereof.

**7. LAW AND REGULATIONS:** Each of the following are continuing assurances upon which Buyer shall be entitled to rely. (A) Infringement. Seller warrants that the use and sale of the Goods and the rendering and use of the results of the Services do not infringe rights in any patent(s), copyright(s), trademark(s), or trade secret(s), and Seller shall indemnify Buyer against liability from all such claims. (B) Labor, Safety, Environmental and Health. Seller warrants that it is in compliance with all labor, safety, environmental and health laws and regulations. (C) Quality. Seller warrants that all the Goods meet or exceed all legal quality requirements. (D) Trade. Seller warrants that it is in compliance with the provisions of all trade laws and regulations. (E) Consumer Safety. Seller warrants that all the Goods conform with all applicable provisions of consumer safety laws and regulations. (F) Other laws. Seller warrants that the manufacture, production, sale, and delivery of the Goods and the rendering of the Services (and the results thereof) are in full compliance with all laws and regulations governing packaging, labeling, weights and measures, and all other applicable laws and regulations.

**8. 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 Goods 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 Goods 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 Goods by Buyer.

**9. APPLICABLE LAW; DISPUTE RESOLUTION.** All matters regarding the construction, interpretation, and performance of this Contract shall be governed by the laws, excluding the rules relating to the choice of law, of Thailand. The United Nations Convention on the International Sale of Goods shall not apply to this Contract. Seller agrees that any action or proceeding arising out of or relating to this Contract shall be settled by binding arbitration in Thailand in accordance with the Arbitration Rules of the Singapore International Arbitration Centre under the Rules 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.

**10. PRICE.** (a) Seller warrants that the prices, payment terms, and other terms and conditions stated for the Goods and Services covered by this Contract 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 Goods 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 Contract, 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 purchase order, the prices set forth in this Contract include all charges for all applicable taxes, import duties, customs, tariffs, or other government-imposed surcharges, as well as packing, transportation, and storage to the F.O.B. point. When an invoice is subjected to a cash discount, the discount period shall be calculated from the later of the date such invoice is received by Buyer or the date on which the Goods or the Services are received by Buyer.

**11. CHANGES.** Buyer may at any time change the specifications or drawings relating to this Contract by giving written notice to Seller. If any such changes cause an increase or decrease in the cost or time required for performance, an equitable adjustment will be made and Buyer's 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. If Seller is unable to provide the Goods or the Services consistent with the requested change(s), or if Buyer and Seller cannot agree on a price for such change(s), Buyer may cancel this Contract under the terms set forth herein.

**12. TERMINATION.** (a) For Cause. Buyer may cancel any or all order(s) under the Contract, in whole or in part, in the event of any breach of this Contract by Seller, including: (i) any defect in workmanship or quality of the Goods (including all related packaging, labeling, and printed matter) or the Services; (ii) any breach of Seller's warranties; (iii) any delay in delivery or departure from delivery, routing, labeling, or packaging instruction; (iv) any deviation from or variation in the quantities, assortments, prices, terms or conditions specified in this Contract; (v) if the Goods or the Services become the subject of any claim of infringement or other claim by any third party; (vi) Seller's

insolvency, bankruptcy, reorganization, receivership, or liquidation; or (vii) Seller makes an assignment for the benefit of creditors or ceases to carry on business in the ordinary course. (b) For Convenience. Buyer may cancel any order under this Contract, in whole or in part, for its sole convenience, at any time prior to shipment of all the Goods or the rendering of all the Services. In the event of such cancellation, Seller shall immediately stop all work hereunder and immediately cause each of its suppliers or subcontractors to cease such work. Buyer's liability to Seller shall be limited to the unit price of the Goods completed or of the Services rendered prior to such cancellation, plus the actual amount of Seller's costs reasonably incurred in contemplation of performance of the canceled portion, less all amounts saved by Seller as a result of such cancellation and all amounts which could have reasonably been mitigated by Seller, including work done after the receipt of cancellation, costs incurred by Seller's suppliers or subcontractors that Seller could reasonably have avoided, and amounts realized by Seller from the sale of Goods or the rendering of the Services to third parties. (c) Disposal of Canceled Goods. In the event of cancellation or termination of this Contract for any reason, Seller shall, prior to disposal of the canceled Goods, remove all of Buyer's proprietary marks and identifying labeling and packaging and otherwise modify such Goods so that neither the identity of Buyer nor that of its product(s) is discernible. (d) 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 Contract, or from the performance or breach thereof, shall in no case exceed the price allocable to the Goods 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 Goods or Services delivered hereunder must be commenced within one year after the date of this Contract.

**13. TITLE AND RISK OF LOSS.** Notwithstanding Section 1, title to Goods purchased under this Contract shall pass to the Buyer upon delivery of the Goods to the F.O.B. point, unless otherwise specified herein. If the Goods ordered call for additional Services such as installation and the like, or if the Goods must meet operating specifications, then the risk of loss shall not pass to Buyer until the Services are performed or the Goods 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.

**14. CONSUMER PROTECTION.** Whenever Seller becomes aware that any Goods or Services (or the results thereof) are or may become harmful to persons or property or that any Goods have become infested or contaminated or that the design or construction of any Goods is defective in any manner which is or may become harmful to persons or property, whether such Goods are used in the same mode as when delivered or are used in the manufacture of, or become part of, goods sold by Buyer, Seller shall immediately give notice to Buyer thereof, including all relevant information with respect thereto.

**15. INSURANCE AND INDEMNITY.** (a) Seller shall obtain and maintain at its own cost and expense, insurance policies underwritten by good and solvent insurance companies adequately covering: (i) the liability of Seller for damage to property and for injury to or death of any of its employees or other person(s); and (ii) the full retail value of all Goods in transit or stored at a facility other than Buyer's facility. Seller also will comply with all additional insurance requirements reasonably required by Buyer in writing. (b) Seller shall not violate or permit to be violated any condition of any such policies and shall at all times satisfy the requirements of the insurance companies writing such policies. Seller shall provide evidence of such coverage satisfactory to Buyer. In case of failure to furnish said policies and/or certificates of insurance, or cancellation of any required insurance, Buyer may terminate this Contract. (c) Seller shall indemnify and hold harmless Buyer and its affiliated companies and their agents and employees from and against any and all damages, losses, liabilities, judgments, and expense (including reasonable attorney's fees and the cost of recalls undertaken for safety or quality reasons) resulting from all claims or suits based on injuries or damages to any person or property arising out of or in any way related to this Contract, including any: (i) breach of any of provision(s) of this Contract by Seller; (ii) delay, use or operation of the Goods or the Services, whether the Goods are in the same mode as when delivered or are used in the manufacture of or become part of goods sold by Buyer; (iii) negligence or wrongful act(s) or omission(s) of Seller or Seller's employees, agents, suppliers or subcontractors in connection with the provision of the Goods or the Services; and (iv) claims, demands, and liens for the value of the Goods or the Services performed. Buyer may assume control of the defense or settlement of any and all claims or suits against Buyer, including the right to designate legal counsel.

**16. CONFIDENTIALITY.** All material, supplies, equipment, tooling, documents, or information furnished by Buyer or paid for by Buyer in connection with this Contract (including specifications, drawings, art work, samples and data) shall (a) remain the property of Buyer, (b) be safeguarded by Seller as confidential, (c) be maintained by Seller in good condition, and (d) be used by Seller only for Buyer's work, and Seller shall not: (i) use any trademark(s) or trade name(s) of Buyer or of its parent(s) or affiliate(s); (ii) disclose the fact that Buyer has ordered or purchased the Goods or the Services; and (iii) except as required for Seller's performance or by law, disclose to any third party any details of or associated with this Contract, the business practices or operations of Buyer, or Seller's relationship with Buyer.

**17. SERVICES.** If this Contract requires Seller to furnish the Services of any person(s), Seller agrees that each such person is not an employee or agent of Buyer, and Seller assumes full responsibility for each person's compensation and taxes incident thereto. All Goods, work, or Services provided by Seller or Seller's subcontractors pursuant to this Contract shall be as an independent contractor and not as an agent of Buyer.

**18. INVOICE PROCEDURE.** After completion of all work, Seller shall submit an invoice in duplicate to Buyer that contains the following information as relevant: (a) purchase order number, (b) Buyer's description of the Goods or the Services, (c) quantities of the Goods or the Services, (d) Buyer's item number(s), (e) Seller's item number(s), (f) unit price(s), and (g) extended total(s). Buyer shall, after acceptance of all work, pay such invoice in accordance with the terms noted on the face of this Contract, or if no such terms are noted, within one hundred twenty (120) days after acceptance of all work. Such invoice shall be supported by all additional certifications required.

**19. TAXES.** Unless otherwise shown on the face of this Contract, the prices stated in this Contract

include all applicable taxes, import duties, license fees or other government charges applicable to this Contract (except VAT). All such taxes shall be separately stated on each invoice provided to Buyer.

**20. MISCELLANEOUS.** Buyer reserves the right to cancel or to suspend shipment of Goods or performance of Services covered by this Contract 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, Buyer may elect to cancel this Contract at no cost to Buyer other than for Goods accepted and Services rendered 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 Goods or delay such Services 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 Goods or delaying Services of this Contract at Buyer's request. The failure of Buyer to claim a breach of any term, privilege, or condition of this Contract 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 Contract 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 Contract. In the event that one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect under the laws of the jurisdiction governing this Contract, such unenforceability shall not affect any other provision of this Contract, but this Contract shall then be construed as if the unenforceable provision or provisions shall have never been present in this Contract. This Contract and any instructions, schedules, exhibits, specifications or other documents provided by Buyer to Seller in connection with this Contract constitute the entire agreement of the parties and supersedes any prior agreements or understandings (oral or written) regarding this Contract 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 Contract 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 Contract. Seller shall not subcontract or assign any right or interest under this Contract (except monies due or to become due) nor delegate any obligations under this Contract 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 Contract shall apply notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.