



THE J.M. SMUCKER CO

## TERMS AND CONDITIONS OF SALE

1. **Definitions.** “**Smucker**” means The J. M. Smucker Company or its designated subsidiary or affiliate. “**Buyer**” means the person or entity that sends a Purchase Order to Smucker for the sale of Goods (individually referred to as “**Party**” and collectively, the “**Parties**”). “**Good(s)**” mean the goods and/or services ordered by Buyer or delivered by Smucker to Buyer under the Purchase Order. “**Purchase Order**” means the purchase order request form or transmission used by Buyer to place an order for Goods with Smucker. “**Terms**” refers to these terms and conditions of sale which govern the sale of Goods by Smucker to Buyer.
2. **Applicability.** Smucker's invoice in response to a Purchase Order and these Terms (collectively, an “**Agreement**”) comprise the entire agreement between the Parties regarding the purchase and sale of applicable Goods, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral regarding the same. Agreement(s) prevail over any of Buyer's general or other terms and conditions of purchase regardless of whether or when Buyer has submitted its Purchase Order or such terms and conditions. Buyer's terms and conditions are hereby expressly rejected, and fulfillment of Buyer's Purchase Order, in whole or in part, does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. Additionally, by forming an Agreement, Smucker is not agreeing to be bound by Buyer's policies or procedures, except where Smucker has expressly agreed in writing with specific reference to such policy or procedure.
3. **Acceptance.** Smucker may accept, in whole or in part, or reject any Purchase Order. As Smucker's method of acceptance, Smucker may provide express confirmation to Buyer of the parts of a Purchase Order Smucker is accepting (e.g., via written confirmation or invoice) or by delivering the Goods, whichever occurs first. No Purchase Order is binding on Smucker unless accepted by Smucker as provided in an Agreement. Smucker may, without liability or penalty, make partial shipments of Goods to Buyer. Buyer will pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's Purchase Order.
4. **Price.** Unless otherwise approved by Smucker in writing, (a) all prices, quotations, shipments and deliveries by Smucker are F.O.B. Destination; (b) all base prices, together with related extras and deductions, are subject to change without notice; and (c) all Purchase Orders Smucker accepts are subject to Smucker's price in effect at the time of its receipt of a Purchase Order.
5. **Taxes.** Prices do not include any taxes or other assessments. All taxes, duties, fees, assessments or other charges of any kind imposed by any federal, state, municipal or other governmental authority which Smucker is required to collect or pay with respect to the provision, production, sale or shipment of the Goods will be the responsibility of Buyer. Buyer agrees to pay all such taxes as a separate line item on an invoice or reimburse Smucker for any such payments made by Smucker.
6. **Setoff; Deductions; Claims.** *In no event is Buyer authorized to deduct any amounts from the amounts owed Smucker unless specifically authorized in writing by Smucker. Buyer waives the right to make any claim regarding pricing, promotions, trade, or other allowances related to an order beyond 60 days from the date of an invoice and for all other claims as stated in the Return Policy (defined below).*

7. **Credit.** All Purchase Orders are subject to the approval of Smucker's Credit Department. Credit terms, including payment terms and credit limits, will be set according to Smucker's proprietary credit guidelines. Buyer's credit terms and performance will be reviewed periodically and credit terms are subject to change at Smucker's sole discretion. Smucker may, at any time, refuse to make shipment or delivery if Buyer fails to fulfill the terms and conditions of payment or fails to provide security in compliance with Smucker's credit guidelines. Smucker may require payment in full or other security in advance. If a cash discount is offered with credit terms, Buyer only earns such discount if full invoice payment is received by Smucker in its bank account within the applicable period.

8. **Default in Payment.** If Buyer fails to make payment(s) under any Agreement between Buyer and Smucker, Smucker may defer further shipment until such payment(s) are made and satisfactory credit arrangements are re-established or (b) cancel any unshipped Purchase Order. Smucker may charge the maximum interest allowed by law for past due payments. The remedies in this paragraph are in addition to any other remedies available to it under an Agreement, at law, or in equity.

9. **Delivery; Transportation.** All Smucker identified shipping dates are estimates and are subject to availability of finished Goods. Unless otherwise agreed to in writing by the Parties, Smucker will arrange for delivery of the Goods to the address provided on the Purchase Order using Smucker's standard methods for packaging and shipping such Goods. With Smucker's written approval, Buyer may pick up orders and receive a Smucker directed freight allowance. Title and risk of loss pass to the Buyer upon Smucker's delivery to a designated Buyer location, or, for Buyer pick up, to a carrier at a Smucker designated shipping point.

10. **Non-Delivery.** The quantity of any delivery of Goods as recorded by Smucker following shipment from a Smucker facility is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary consistent with documentation required under Smucker's Return Policy.

11. **Inspection.** Inspection of Goods will be governed by the Smucker Return Policy located at [jmsmucker.com/legal](http://jmsmucker.com/legal) ("**Return Policy**"). The remedies set forth in the Return Policy will be the sole and exclusive remedies available to Buyer for occurrences falling under the scope of that policy.

12. **Confidentiality.** "**Confidential Information**" of a Party means any material, non-public information relating to an Agreement, written or oral, that is disclosed or made available to the receiving party, directly or indirectly, through any means of communication or observation and that is marked confidential or would appear confidential to a reasonable person based on the nature of the information. "Confidential Information" will not be deemed to include information which the receiving party can demonstrate: (a) is now, or hereafter becomes generally known or available to the public, through no fault of the receiving party; (b) is known by the receiving party prior to the time of receiving such information; (c) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; (d) is disclosed pursuant to the prior written consent of the disclosing party; (e) is required to be disclosed by the receiving party pursuant to a court order as otherwise required by law; provided, however, that the receiving party, unless prohibited by court order, notifies the disclosing party within sufficient time to allow the disclosing party to contest such order; or (f) is independently developed by persons at the receiving party who had no access to the Confidential Information.

The receiving party will only use or disclose the disclosing party's Confidential Information (y) as is necessary to perform its obligations under an Agreement and will take reasonable security precautions, at least as great as the precautions it takes to protect its own Confidential Information and (z) to those employees, attorneys or consultants that have executed appropriate written agreement sufficient to enable the receiving party to comply with the provisions of this Section.

Except as otherwise provided for in an Agreement, all Confidential Information is and will remain the exclusive property of the disclosing party. Nothing in an Agreement grants any express or implied right to or waiver by the disclosing party of its proprietary interests in the Confidential Information. The receiving party will return all Confidential Information, and all copies thereof, within five (5) business days of the request of the disclosing party.

Confidential Information was developed or obtained by the disclosing party by investment of significant time, effort and/or expense, and the Confidential Information provides the disclosing party with a significant competitive advantage in its business. The obligations contained in an Agreement are necessary and reasonable to protect the business of the disclosing party, and the receiving party expressly agrees and acknowledges that monetary damages may be inadequate to compensate the disclosing party for any breach of any covenant set forth in an Agreement. Any violation, or threatened violation of an Agreement by the receiving party may cause irreparable harm to the disclosing party, and the disclosing party will be entitled to seek injunctive or equitable relief, in addition to any other remedies available, as may be deemed proper by a court of competent jurisdiction without posting any bond. The obligations of nondisclosure set forth in this Section will survive the termination or expiration of an Agreement. In the event that any Confidential Information is lost, misplaced, stolen or in any way compromised, the receiving party will notify the disclosing party as soon as reasonably possible and provide the details and nature of the situation.

13. **Limited Warranty.** If Smucker is a U.S. entity, Smucker warrants and guarantees that Goods contained in each shipment or other delivery made to, or on the order of, the Buyer is not: (a) adulterated or misbranded within the meaning of the Federal Food, Drug & Cosmetic Act, nor a Good which may not, under the provisions of Section 404 or 505 of the Act, be introduced into interstate commerce; (b) adulterated or misbranded within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Caustic Poison Act, state Pure Food Acts or any other applicable federal, state, or local laws; and not a Good which cannot be legally transported or sold under the applicable provisions of any federal, state, or local laws; or (c) misbranded within the meaning of any applicable federal, state, or local law, when bearing labels furnished by Smucker and affixed to such Goods or repackaging by the Buyer in accordance with instructions furnished by Smucker.

If Smucker is a Canadian entity, Smucker warrants and guarantees that Goods contained in each shipment or other delivery made to, or on the order of, the Buyer is not: (d) adulterated or misbranded within the meaning of the Canadian Food and Drugs Act, nor an article which may not, be introduced into interstate commerce; (e) adulterated or misbranded within the meaning of or any other Canadian applicable laws and Regulations; and not an article which cannot be legally transported or sold under the provisions of the Canadian applicable laws and Regulations; or (f) misbranded within the meaning of any applicable federal, provincial, or local law, when bearing labels furnished by Smucker and affixed to such Goods or repackaging by the Buyer in accordance with instructions furnished by Smucker.

14. **Remedies; Disclaimer.** Following a breach of a limited warranty, Smucker will either: (a) replace such Goods or (b) credit or refund the price of such Goods at the pro rata Purchase Order rate. If Smucker so requests, Buyer will, at Smucker's expense, return such Goods to Smucker or destroy Goods at Smucker's direction. The remedies set forth in herein will be the Buyer's sole and exclusive remedy, and Smucker's entire liability, for any breach of the limited warranty set forth in Section 13. Notwithstanding anything in this paragraph to the contrary, if applicable Smucker's Logistics Development Incentive (LDI) Policy, provided to Buyer separate from these Terms and as updated periodically by Smucker, will be Buyer's sole and exclusive remedy for unsaleable Goods or products as defined by that policy.

OTHER THAN SMUCKER'S LIMITED WARRANTY ABOVE, SMUCKER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY DETERMINATION OF THE SUITABILITY OF THE GOODS FOR THE USE CONTEMPLATED BY THE BUYER IS THE BUYER'S SOLE RESPONSIBILITY. NOTWITHSTANDING ANYTHING IN THESE TERMS TO THE CONTRARY, IN NO EVENT WILL SMUCKER BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR FOR LOSS OF BUSINESS, OPPORTUNITY, OR PROFITS, WHETHER OR NOT BASED UPON NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. FURTHER, SMUCKER'S CUMULATIVE LIABILITY WILL NOT EXCEED THE AMOUNT PAID BY BUYER TO SMUCKER FOR THE GOODS UNDER AN AGREEMENT TO WHICH BUYER'S CLAIM OR CAUSE OF ACTION RELATES.

15. **Indemnity.** Smucker will not be liable for, and Buyer will indemnify, defend and hold harmless Smucker, its affiliates and their respective equity owners, shareholders, officers, directors, members, managers, employees, representatives and agents ("**Indemnitees**") from and against any and all third-party claims, losses, liabilities, costs and expenses, including attorneys' fees, arising out of or resulting from the handling, use, combination with other ingredients, incorporation, manufacture, storage, processing, alteration, distribution, transportation, sale or marketing of Goods, or any other action or inaction with regard to the Goods, in each case after the delivery thereof to Buyer; provided however, that Buyer will not be liable to Smucker for damages directly caused by the sole negligence of Smucker as determined by a final, non-appeal judgment.

16. **Authorized Resale.** Buyer will only purchase Goods from Smucker or a Smucker approved distributor, wholesaler, or broker, and will not inbound diverted Goods. If Buyer is a distributor, wholesaler or broker, Buyer will sell Goods only to resellers within channels approved by Smucker; and if Buyer is a retailer, Buyer will sell Goods only to the end consumer of the Goods. Buyer will not resell Goods to any person or entity listed on a Smucker do-not-sell list that Smucker communicates to Buyer. Buyer will comply with any authorized distributor, authorized retailer, or authorized reseller policies, as applicable, provided separately by Smucker.

17. **Compliance with Law.** Buyer will comply with all applicable laws, regulations, and ordinances. Buyer will maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under an Agreement. Buyer will comply with all export and import laws of all countries involved in the sale of the Goods under an Agreement or any resale of the Goods by Buyer.

18. **Termination.** In addition to any remedies that may be provided under these Terms, Smucker may terminate an Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the applicable invoice; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

19. **Force Majeure.** Failure of either Party to perform any of its obligations under an Agreement as a result of circumstances or causes beyond its reasonable control will not constitute a default under or breach of these Terms; provided, however, that such circumstances or causes will not relieve Buyer of its obligation to make payment under an Agreement.

20. **Intellectual Property.** Buyer acknowledges and agrees that Smucker or its licensors, respectively own all proprietary rights in and to the Smucker brands, names, logos, trademarks, service marks, trade dress, copyrights, and other intellectual property rights related to the Goods ("**Smucker IP**"). Buyer is granted a limited, non-exclusive, non-transferable, revocable license to use the Smucker IP solely for purposes of marketing and selling the Goods under an Agreement. This license will cease upon termination of Buyer's status as an authorized reseller of Smucker Goods. All goodwill arising from Buyer's use of the Smucker IP will inure solely to the benefit of Smucker or its licensors. Buyer's use of the Smucker IP will be (a) in accordance with these Terms and any brand guidelines that may be separately provided by

Smucker and (b) commercially reasonable as to the size, placement, and other manners of use. Smucker reserves the right to review and approve, in its sole discretion, Buyer's use or intended use of the Smucker IP at any time. Buyer will not create, register, or use any domain name or any mobile application that contains any Smucker product name or any trademark owned by Smucker or its licensor.

21. **Waiver.** Waiver by Smucker of any breach of any of the Terms set forth herein will not be construed as a waiver of any other breach, and the failure of Smucker to exercise any right arising from any default of Buyer hereunder will not be deemed to be a waiver of such right, which may be exercised at any subsequent time.

22. **Survival.** The completion or termination of an Agreement will not affect any rights and obligations, which by their nature must continue to have effect after such completion or termination.

23. **Assignment.** Smucker may assign any Agreement. Buyer will not assign any Purchase Order or Agreement, or any interest therein, without the written consent of Smucker. Any such actual or attempted assignment without Smucker's prior written consent will entitle Smucker to cancel such Purchase Order or Agreement upon written notice to Buyer.

24. **Notices.** The Parties will send notices, requests, or demands under an Agreement in writing. Notices will be deemed received by a Party (i) upon personal delivery, (ii) five days after being mailed by certified mail, return receipt requested, or (iii) one business day after being sent by nationally recognized overnight courier. Notices to Buyer will be sent to the address on the Purchase Order and to Smucker at: The J. M. Smucker Company, One Strawberry Lane, Orrville, Ohio 44667, Attn: Legal Department; Copy to: Legal.Notices@jmsmucker.com. If Smucker is a Canadian entity, notices should be sent to Smucker Foods of Canada Corp., 80 Whitehall Drive, Markham, Ontario, L3R 0P3, Attn: Legal Department; Copy to: Legal.Notices@jmsmucker.com

25. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in an Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever.

26. **Choice of Law; Venue; Language.** All Agreements will be governed by and construed in accordance with the laws of the State of Ohio without reference to its conflicts of laws provisions. Litigation of disputes arising under an Agreement or any matter of dispute between the Parties will be brought only in the state or federal courts of the State of Ohio. The Parties expressly waive the application of the United Nations Convention for the International Sale of Goods. If Smucker is a Canadian entity, the above is replaced with the following: all Agreements will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties expressly waive the application of the United Nations Convention for the International Sale of Goods. Additionally, if Smucker is a Canadian entity, the governing language for this Agreement will be English, and no concurrent or subsequent translation of this Agreement into any language will modify any term of this Agreement. Les parties aux présentes ont expressement exigées que la présente convention et tous les documents et avis qui y sont afférents soient rédigés en anglais.

27. **Waiver of Jury Trial.** THE PARTIES IRREVOCABLY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION OR OTHER PROCEEDING BROUGHT BY THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, ANY PURCHASE FROM SMUCKER, WHETHER BASED UPON CONTRACTUAL, STATUTORY, TORTIOUS OR OTHER THEORIES OF LIABILITY.