

**Terms and Conditions for Sales/Leases**

These Terms and Conditions for Sales/Leases (these "Terms") are incorporated into each electronic or written communication or document referencing them as if fully stated therein. Capitalized terms used below have the meanings ascribed to them elsewhere within these Terms.

Except to the extent Gehl Foods, LLC, otherwise agrees in a signed written agreement that amends or waives these Terms (pursuant to these Terms) and to the extent the other party ("you" or "Customer" and in the possessive, "your" or "Customer's") also agree(s) therewith (each, a "Signed Agreement"):

**1. In General.**

- These Terms govern all items (whether consumable products or dispensers) provided by Gehl Foods, LLC ("Gehl", "we" or "us" and in the possessive, "Gehl's", "our" or "ours"), and these Terms are the exclusive terms and conditions by which we provide products and dispensers.
- You accept and agree to be bound by these Terms if you order, request, purchase, or accept any product or dispenser directly or indirectly from us or if you otherwise incorporate, assent to, accept, and/or otherwise agree to these Terms. YOUR ORDER IS CONDITIONED ON THESE TERMS.
- A version of these Terms shall be deemed to be incorporated into (as if fully restated in) each and every written or electronic communication/document between us and you, and the version so incorporated shall be the unnegotiated version at <https://www.gehlfoodandbeverage.com/terms-sales-GFB>, except, in each case, to the extent a version of these Terms is already explicitly incorporated, restated and/or amended/negotiated (pursuant to these Terms) therein.

**2. Ordering Instructions (when ordering directly from us).**

- Please submit orders to:  

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| <b><u>Product Orders</u></b><br>Fax: 262-251-9597<br>Email: <a href="mailto:orders@gehlfoods.com">orders@gehlfoods.com</a> | <b><u>Dispenser Orders</u></b><br>Internet: order from <a href="https://www.gehls.com/Consumer/Lease-a-Dispenser">https://www.gehls.com/Consumer/Lease-a-Dispenser</a><br>Mail or Fax: complete form at <a href="https://www.gehls.com/Consumer/Lease-a-Dispenser/Leasing-Info">https://www.gehls.com/Consumer/Lease-a-Dispenser/Leasing-Info</a> and mail to Gehl Foods, LLC, P.O. Box 1004, Germantown, WI 53022 or fax to 262-250-6847 |
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- Regarding credit and payment:  

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| <b><u>Product Orders</u></b><br>When placing a product order on credit for the first time, provide a completed credit application to Gehl Foods, LLC, P.O. Box 1004, Germantown, WI 53022. Please allow at least one week for our credit review. | <b><u>Dispenser Orders</u></b><br>Orders must be paid before dispensers are shipped. A credit card may be used by ordering online at the internet address above. Orders for dispensers that are prepaid by check will be held for at least nine business days while the check clears. Orders paid by money orders or cashier checks will only be held for three days. |
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- When placing an order, please indicate:  

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| <b><u>Product Orders</u></b><br>Name of the purchaser<br>Whether the order is for delivery or pickup<br>Shipping address, if applicable<br>Billing address, if applicable<br>Contact information: <ul style="list-style-type: none"><li>• name of an individual we can contact</li><li>• the individual's title, if applicable</li><li>• company name, if applicable</li><li>• address</li><li>• email address</li><li>• phone number</li><li>• fax number, if available</li></ul> Purchase order number<br>Our item number for each product ordered<br>Flavor of each product ordered<br>Pack size of each product ordered<br>Quantity of each type of product ordered*<br>* Full pallets only<br>Total number of cases of all products ordered*<br>*Minimum order size: full pallets per item and at least 6,000 pounds. | <b><u>Dispenser Orders (if Not Placed Online)</u></b><br>Name of the lessee (user of the dispenser)<br>Shipping address<br>Contact information: <ul style="list-style-type: none"><li>• name of an individual we can contact</li><li>• the individual's title, if applicable</li><li>• company name, if applicable</li><li>• address</li><li>• email address</li><li>• phone number</li><li>• fax number, if available</li></ul> Our item number for each dispenser ordered<br>Color of each dispenser ordered<br>Whether it is a single or dual dispenser<br>Quantity of each type of dispenser ordered<br>Total number of dispensers ordered<br>If a signed lease agreement is not included with the order, the name and date of the agreement that governs the lease of the dispenser(s) being ordered |
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- For products normally stocked, a lead time of 12 business days for product being picked up and 14 business days for product being shipped is often sufficient, however, products not normally stocked may require additional lead times and may also require a purchase order that is separate from products normally stocked. Shipments of product that are less than a full truckload are subject to consolidation schedules and will take longer. All pickup, shipment and/or delivery dates are estimates that do not account for carrier delays, delays that will occur during holiday weeks, unexpected events/circumstances causing delays, or delays due to inclement weather, acts of God, or other circumstances outside our reasonable control.
- Small pickup orders sometimes have shorter lead times, but we must have at least two full business days to process an order. All requests for small pickups within a short timeframe must be preapproved by us in writing, but even then, no small pickup order may contain a requested pickup date that is within two business days of the time the order is placed.
- Please do not assume we have received an order unless we have acknowledged it in writing or via electronic means. We typically acknowledge orders for products within two business days. With respect to orders for dispensers, if we have an applicable email address on file, we typically acknowledge orders on the date the dispenser ships.
- The information in our order acknowledgement will reflect our pricing and our then-current estimated product/dispenser availability in response to your request/order (unless your EDI System limits our ability to do so or indicates you do not wish to receive such information). We will send updates of our order acknowledgement (or email you) if our estimates change (unless your EDI limits our ability to do so or indicates you do not wish to receive such information), in which case we recommend revising and resubmitting your order and, if your order is for pickup, also communicating relevant changes to your shipping department and carrier. If you wish to revoke/cancel your order, notify orders@gehlfoods.com at least two full business days before our then-current estimated ship/pickup date communicated to you (or promptly upon receipt of any change to our estimates provided during that two-day period).

### 3. Orders in General.

- All orders are subject to our acceptance or rejection in whole or in part, and no order/change is ever accepted (whether in whole or in part) except as follows: pickup dates last communicated to you become final/accepted when they are less than two business days away, and product/dispenser availability last communicated to you becomes final/accepted to the extent such products/dispensers are shipped/delivered.
- If we reject an order in full because all ordered products are currently (or become) unavailable, please submit a new order when such products become available. We do not backorder products.
- If we reject only part of an order or part of a change to an order (whether via email, an order acknowledgement that does not reflect your request/order, failure to fill it as requested/ordered, or otherwise) because one or more products are unavailable, we will short the order unless you provided notice to orders@gehlfoods.com that you revoke/cancel your order at least two full business days before our then-current estimated ship/pickup date (or promptly upon receipt of any change to our estimates provided during that two-day period). Please submit another order when the products that weren't provided become available. As stated above, we do not backorder products.
- If we propose a change to an order (whether via email, an order acknowledgement that does not reflect your request/order, failure to fill it as requested/ordered, or otherwise), you/Customer will be deemed to have changed your order accordingly unless you provided notice to orders@gehlfoods.com that you revoke/cancel your order at least two full business days before our then-current estimated ship/pickup date (or promptly upon receipt of any change to our estimates provided during that two-day period).
- You may not propose a change to an order within two business days of any pickup date communicated to you or within three business days of any estimated ship date. Please do not assume that we have received a proposed change unless we have sent written or electronic acknowledgement of the same.

### 4. Dispensers.

- We lease all of our dispensers pursuant to an agreement such as our standard lease agreement located at [www.gehls.com/DefaultFilePile/pdf/Forms/Lease\\_Agreement.pdf](http://www.gehls.com/DefaultFilePile/pdf/Forms/Lease_Agreement.pdf) (our "Standard Lease"), a copy of which is hereby incorporated into these Terms as if restated fully herein.
- There may be times, however, when we sell or donate (with or without conditions) a dispenser instead of leasing that dispenser, but a sale or donation shall only be deemed to have occurred if there can be no doubt that the dispenser is sold or donated by us and not leased by us (for example, via a Signed Agreement retained by you that explicitly states that a "dispenser" is "sold" by us or, if you purchased the dispenser from us using a web portal such as Amazon.com, via your retained receipt for the purchase). If you cannot prove that we sold or donated a dispenser, then except as set forth in Section 16 of these Terms, the dispenser shall be presumed to have been leased. When sold or donated, you are responsible for (and shall ensure) full compliance with, and you and all other users of the dispenser must at all times comply in all respects with, the dispenser's User Manual and the original stickers/tags applied to the dispenser (including, without limitation, as it relates to safeguards, care, cleaning and maintenance). To the maximum extent allowable by law, the term *products* as used below in these Terms shall include dispensers deemed to have been sold or donated (except as follows) and:
  - No allowances are applicable on dispenser sales or donations; and

- If the dispenser contains (anywhere on it or in it) any of our trademarks and/or any other marking with the "Gehl's" brand and/or any other form of our name and/or business, then no cheese sauce or other product may be used in and/or dispensed from the dispenser except our Gehl's-branded products, and you may not take any action (and/or fail to take any action) that, and you shall ensure that no action is taken (and/or failed to be taken) that, could deceive and/or otherwise mislead anyone and/or violate any of our intellectual property rights and/or that would have violated our intellectual property rights if such action/inaction had been engaged in within the United States; and
- The section of these Terms entitled *Limited Warranty* is not applicable, and instead:
  - in the case of dispenser sales (other than those referred to in Section 16 of these Terms), the section of the dispenser's User Manual entitled (or such other information that is included with the dispenser or subsequently provided entitled) *Limited Warranty* (and each of its subsections, including, but not limited to, *Limited Warranty, Limitation and Exclusions, Disclaimer of Implied Warranties, Disclaimer of Representations Outside of Warranty, and Limitation of Remedies; Exclusion of Incidental and Consequential Damage*) applies and controls – please contact us if this *Limited Warranty* is missing from your dispenser materials, and we will be happy to provide it to you; and
  - in the case of dispenser donations, Sections 16(E)(1) and (2) of these Terms apply and control.
- As it relates to a dispenser order (and the provision, lease, and shipment/delivery of that dispenser), if there is any conflict between these Terms and the terms and conditions found in an agreement governing the lease of that dispenser (the "Applicable Lease"), the Applicable Lease shall govern.
- An order for a dispenser may not be processed until we have on file an Applicable Lease that has been either physically signed or agreed to through our on-line ordering system (a "Signed Applicable Lease"). Any payment enclosed with a dispenser order may be returned if we do not timely receive a Signed Applicable Lease.
- If we process an order without a Signed Applicable Lease (and you cannot prove we sold the dispenser), the version of our Standard Lease that is in effect on the date that order is placed shall be the Applicable Lease, with the Placement Fee (as defined therein) being the amount paid/charged and the Effective Date (as defined therein) being the date of that order.

## 5. Products.

- ALL SALES ARE FINAL – NO RETURNS. Exceptions will only be made within our sole discretion. Exceptions are not made for product inventory that has not moved or is slow to move, for expired product (or product after its best-by date), or for errors or damage caused by carriers hired or owned by Customer. Except as otherwise required by law or agreed to in an applicable signed writing:
  - When we hire the applicable carrier, should there be any error, damage in shipment, or any other apparent damage or defect, Customer must reject the affected products at the time of receipt (sending them back with the carrier) and note the problem and number of affected cases on the Proof of Delivery (POD). When Customer (or a carrier hired or owned by Customer) is picking up products, should there be any loading error or apparent damage or defect, Customer must reject the affected products at our dock (leaving them with us) and not have a Bill of Lading (BOL) signed with respect to those products. Once Customer has signed a POD without noting any error/damage and whenever a BOL is signed at pickup, Customer is accepting all products noted therein and is responsible for payment of those products. For products that Customer does not reject as described above, if Customer later discovers any latent damage or defect for which we are responsible, in order to make a claim for a refund or credit, Customer must invoke its warranty rights (if available) by contacting us immediately, and in no event later than two days following discovery of the issue, with a description of the problem. Thereafter, Customer must promptly and accurately complete our Product Return Request Form, sign and return it (together with photographs of the affected cases on all sides) within two days, and keep it updated as additional information becomes available.
  - If we require it, Customer must return affected products (and/or, if we prefer, a sample of them) to us or to our representative and/or dispose of them, in each case, as directed by us. Reasonable direct and documented shipping costs of any such returns will be reimbursed by us to the extent we are responsible for the corresponding latent damage or defect. Such costs may not be marked-up in any way.
  - Customer's right to a refund or credit will be subject to Customer properly maintaining, storing, and segregating affected products from unaffected products so that Customer can ensure that unaffected products remain safe and fit for use, resale, etc. as intended. Other terms and conditions may also apply depending on the situation.
  - Our customer service department will review and approve or decline requests for returns (and refunds/credits). No returns may be made without our approval and an RMA number issued by us on our External RMA Form. If a return is approved, Customer must return the affected products (and/or, if we prefer, a sample of them) within 30 days and must adhere a copy of the issued External RMA Form to ALL pallets and the BOL. Failure to meet both requirements may result in our rejection of the return (and of any refund/credit).
  - Should we deny a refund/credit for any returned products (for example because our inspection failed to verify the existence of a problem or our responsibility therefor or the return was made in violation of these Terms), then we will let Customer know and afford Customer 10 days to retrieve the products from us, less those used by us for testing, a sample that we may elect to retain and for which we will refund/credit Customer, and any that we in good faith believe may be unsafe or unfit (in which case we will preserve for Customer's retrieval only a sample of the unsafe/unfit products and on behalf of Customer dispose of what remains after we retain a sample). We do not otherwise accept responsibility for the longer-term storage of returned products and may destroy or otherwise dispose of products left beyond such 10-day period without any liability on our part.

- Should we ever authorize a refund/credit for any products when we are not responsible for the latent damage or defect (or when the return was made in violation of these Terms), then the amount of the refund/credit will be reduced by the costs and expenses we incurred in shipping the original products to Customer, any handling or restocking fees (20% of sales invoice), and any other damages suffered by us in connection with the returned or affected products.
- If you have any questions, please call 1/800-521-2873 between the hours of 8:00 am – 5:00 pm CST M-F, or email [help@gehlfoods.com](mailto:help@gehlfoods.com).

- Returns (and refunds/credits) are not authorized for, and we will not be responsible for, any cost, expense, damage, or defect that results from or is related to abuse; misuse; neglect; or improper transportation, storage, use, modification or handling of any product or dispenser after delivery by us; negligence or willful misconduct by anyone other than us; the natural expiration of any product (or product after its best-by date); violation of any laws (including, but not limited to, those stemming from common law), rules, regulations and/or other requirements created by any judiciary, legislative, or other governmental (or quasi-governmental) body, agency, entity or other authority (together, "Laws") by anyone other than us; and/or violation of any agreement between us and/or any of our terms or conditions for sales/leases by anyone other than us.
- Subject to our lien for unpaid invoices, delivery of product by us to a carrier at the point of shipment shall constitute delivery to Customer.

**6. Pricing.**

- All prices and conditions are subject to change (including, but not limited to, addition, modification and/or deletion) by us at any time without notice.
- As described in the Ordering Instructions, Customer shall order full pallets only and a minimum of 6,000 pounds.
- Bracket pricing for products is based on total product weight of the shipment with a maximum of a full truckload per order.
- Pricing does not include sales, excise or use tax. In lieu of the payment of any such tax, you shall provide a tax exemption certificate acceptable to the relevant Government Authority.
- Prices for products include pallets, unless otherwise negotiated.
- Pricing does not include any services. Additional charges will apply to accommodate any services such as special loading, handling, shipping, or unloading instructions (for example, but not limited to, the use of airbags in shipment). Customer shall pay these charges.
- Our price lists and prices are our confidential information and cannot be passed on to third parties without our written preapproval.

**7. Payment Instructions.**

- For sales of products made on credit, payment terms are Net 10 days, measured from the date of the invoice. The date of the invoice will be deemed to be the date the product leaves our dock.
- We encourage payment through ACH (Automated Clearing House electronic transfer of funds). Please contact one of our sales representatives for an ACH Credit Authorization Agreement for initial setup.
- With each ACH payment, Customer shall send a remittance notification to [ar@gehlfoods.com](mailto:ar@gehlfoods.com). Please make ACH payments to:

Gehl Foods, LLC  
 BMO Harris Bank  
 ABA #071000288  
 Acct #2648681

- For payments made by check or money order, please mail payments to:

**For Products:**  
 Gehl Foods, LLC  
 Box 95076  
 Chicago, IL 60694-5076

**For Dispensers:**  
 Gehl Foods, LLC  
 P.O. Box 1004  
 Germantown, WI 53022

- The payment date will be deemed to be:
  - for payment made via ACH: the date the payment is received in our account.
  - for payment made via U.S. mail: the date we receive the payment.

## 8. Credit.

- Credit is subject to a credit review, the results of which are satisfactory to us. If at any time the financial responsibility of Customer becomes unsatisfactory to us, we may require payment in advance or a satisfactory security or guarantee. Nothing in these Terms shall be interpreted to require us to grant credit to (or make any other payment arrangement with) Customer.
- If we receive an order before we have been paid for previous orders, we may hold that order until we receive all payments. If we receive an order before we have been paid for all past-due amounts, we may hold that order until we receive all such amounts.
- If we have accepted an order and Customer is past due for any amount at the time of pickup, shipment, or the carrier's delivery of that order, we may withhold any or all of the ordered products and dispensers until we receive all amounts.
- If we require it, Customer shall pay interest on all past due amounts equal to the lesser of 1.5% per month or the maximum amount allowed by law. To the extent permitted by law, Customer shall also pay all costs and expenses involved in collection (including, but not limited to, attorneys' fees and expenses) as well as administrative fees.

## 9. Pickup, Shipment, and Delivery.

- If a date for pickup, shipment, or delivery is indicated by us in any manner, it is understood to be an estimate (without our guarantee or any liability on our part as to that date). We will, however, make in-stock products available for pickup (or shipment, as is applicable) as near to that date as practicable. If a date for pickup, shipment, or delivery is specified by or on behalf of Customer, it is understood to be a request without any guarantee or liability on our part as to that date.
- We reserve the right to cancel an order or postpone pickup, shipment, or delivery for any reason, including, but not limited to, a strike, transportation unavailability, accident, fire, or other cause beyond our reasonable control.
- If Customer picks up products (even when transportation is arranged/scheduled by us for Customer's benefit), any charges by its carrier will be for Customer's account and are the sole responsibility of Customer.
- We only sell products within the United States and do not act as (and shall not be deemed to be) an exporter of any products or dispensers. Sales are Ex Works (EXW) (as defined by Incoterms© 2020), Germantown, Wisconsin (so that our customers are responsible for all activities/costs after packaging, including shipping and insurance costs), except that: (1) we will load a standard truck at our dock, (2) we may arrange/schedule transportation on Customer's behalf if agreed upon by the parties (such transportation to be paid for by Customer), and (3) we may deliver within the 48 contiguous states and the District of Columbia (of the United States) if such arrangements have been made and if pricing reflects such delivery.
- If Customer has not elected to pick up products, Customer will pay for any charges of the carrier at Customer's location due to delays in unloading (where total time from arrival to departure exceeds two hours), re-delivery, furnishing helpers, sorting, accessorial services, and any non-standard charges.
- Customer must be able to accept 53-foot trucks for deliveries if it has not elected to pick up.
- We reserve the right to charge a fee for missed and late appointments by Customer (which fee may be invoiced separately), and Customer is responsible for paying this fee. Please contact your Sales Representative or Customer Service Representative for the current fee.
- We may have additional terms and conditions applicable to pick up, shipping, and delivery. Please contact 262-251-4100 with questions.

## 10. Product Pick Up Instructions.

- As indicated in our Ordering Instructions, we must have at least two full business days to process a pickup order. No order may contain a requested pickup date that is within two business days of the time the order is placed.
- As indicated in our Ordering Instructions, the minimum order is at least 6,000 pounds and full pallets per item.
- Pickup orders require a loading appointment made at least 24 hours in advance.
- Please contact us at via email at [shipping-logistics@gehlfoods.com](mailto:shipping-logistics@gehlfoods.com) to make a loading appointment. We can typically be reached weekdays (excluding holidays) from 7:00 a.m. to 3:00 p.m. central time. Loading times are typically during these same days/hours.
- No attempt shall be made to make a loading appointment that is earlier than the pickup date and time requested in the order or the estimated pickup date and time provided by us.
- Our pickup address will be one of multiple locations. Please confirm which is applicable when making an appointment.

- Drivers must not park at a dock when arriving.
- All drivers must have the following information upon arrival and before picking up:
  - Appointment time
  - Customer name
  - Destination (city and state)
  - Customer purchase order number
- If a driver is running late for a pickup, we must be promptly notified via email at [shipping-logistics@gehlfoods.com](mailto:shipping-logistics@gehlfoods.com) so that we can reschedule the pickup to the next available timeslot. As noted above, we reserve the right to charge a fee for missed and late appointments (which fee may be invoiced separately), and Customer is responsible for paying this fee.
- Trucks will not be allowed to arrive before 6:00 a.m. or stay overnight for any reason.
- Trucks must be clean, free from odors, equipped for temperature requirements and maintained to prevent damage during transit and injury to our loading equipment and personnel. We reserve the right to refuse a pickup for any reason, including, but not limited to, a disruptive driver or a vehicle we perceive as dangerous.
- Drivers must let us know upon arrival if there will be another pickup after the one from us. We will stretch the load out to the end of the trailer unless told otherwise.
- Unless other arrangements have been made in advance, trucks must be dock high (four foot high) and able to safely accept a forklift.
- Drivers must obey all reasonable requests, signs, and all health and safety instructions. Customer will be responsible for its carriers and their drivers in all respects.
- Smoking is permitted only in designated areas.
- Claims for damage caused by us must be substantiated. For example, without limitation, if the claim is that we damaged a product in loading it, the claim must be substantiated by photos of the product undisturbed in the truck before unloading. Such claims, as well as claims for missing product or improper product, must be made promptly, and in any event, no later than 24 hours after unloading.
- Carriers and drivers must comply with all applicable Laws, including, but not limited to, Laws pertaining to the safe and sanitary transporting of food products and the Food Safety Modernization Act.
- Each shipment must be sealed and remain unopened until it reaches its final destination (except to the extent otherwise required by a government official and properly reported in the seal accountability log).
- Customer will comply with these instructions and ensure that its carriers and drivers comply as well.

#### 11. Amounts Due to Customer.

- If applicable, to be entitled to any previously approved refund, payment, or credit from us, we must be invoiced for the same, unless a deduction or other form of payment has been agreed to by us in a signed writing. No other deductions or setoff may be taken from our invoices. If the foregoing is violated, we have the right to treat the amount of the deduction as a balance due. A balance due means we may, among other actions, invoice Customer back for such amounts, reduce the payment of allowances, hold orders, or withhold delivery of products until the balance is paid.
- No refund, payment, or credit will be given for samples taken from a distributor's inventory unless preauthorized by us. The volume and frequency must be reasonable, and again, the amount must be invoiced to us (and not deducted from our invoices).
- Customer waives any and all claims arising out of its transaction with us unless commenced within 12 months from the transaction date. Any audit claim must be fully documented by copies of invoices, contracts, deal sheets and bills of lading. Customer is responsible for the proper review of third-party audit claims prior to submissions.

#### 12. Allowances.

- If, in our sole discretion, we ever offer to provide any allowance, credit, refund, billback, discount, marketing fund, merchandising fund, or other trade fund, promotional payment, etc. (each, an "allowance"), we shall not be liable to pay it if there has not been full compliance with its terms and conditions. For example, without limitation, our distributors may be required to pass through to their direct and/or indirect customers the allowance in order to qualify for it. Failing to do so would mean that we are not liable for any such allowance. As a further example, without limitation, if an allowance has a specific time period during which it is applicable, we shall not be liable for that allowance to the extent related to services performed outside of that time period.

- To be entitled to any allowance correlated to a product, unless the terms and conditions involving that allowance explicitly state otherwise, Customer must take title and physical possession of that product at its owned/operated facility within the timeframe applicable to the allowance. Please contact one of our sales representatives if there are any questions.
  - To be entitled to any applicable allowance, we must be invoiced for the amount of the allowance, unless a deduction has been agreed to by us in a signed writing. As stated in Amounts Due to Customer above, no other deductions or setoff may be taken from our invoices. Invoices and applicable documents for an allowance must be received by us within 45 days of the sale of the applicable product by us (or such longer period as we may agree in a signed writing), or such allowance will be forfeited.
  - Any and all allowances will be subject to our terms and conditions for the same. Such terms and conditions are subject to change (including, but not limited to, addition, modification and/or deletion) by us at any time without notice.
  - We reserve the right to withhold payment of any allowance if Customer is not current on all payments. Deductions for invalid claims (those which result in a violation of the terms or conditions to, or result in a change (including, but not limited to, addition, modification and/or deletion) in the nature of, our allowance programs) and/or undocumented claims will be charged back for repayment or, at our option, will be deducted from other allowances. In addition, we reserve the right to require reimbursement of administrative costs associated with the research of any invalid claims.
  - The terms and conditions of any allowance program and the allowances themselves are our confidential information and cannot be passed on to third parties without our written preapproval.
13. **Availability.** We do not guarantee the availability of our products or dispensers and as such shall not be liable for allowances or other costs or deductions when products and/or dispensers are not available for pickup, delivery, or shipment.
14. **Policy Acceptance.** Acceptance of an order by us does not constitute acceptance by us of any term, condition, or provision appearing on or referenced in any written or electronic document submitted to us.
15. **Regulatory Compliance.** The amount of any tax, charge, or imposition not in effect at least 15 days before the effective date of a price list which may, prior to the completion of deliveries, be levied, imposed, or increased by the U.S., any state or any governmental (or quasi-governmental) agency, upon or measured in terms of any of the commodities used in the manufacture of products or dispensers covered by that price list, upon the finished products or dispensers, upon the containers therefor, or upon the processing, purchase, sale, holding for sale, distribution, or handling of any said commodities, products, dispensers, or containers if paid, borne or required to paid or borne (directly or indirectly) by us, shall be added to the prices specified, with Customer responsible for the remittance of payment pursuant to these Terms.
16. **No Diverting and International Matters.**
- A. No Diverting and International Matters - Generally.** We sell our products and lease our dispensers solely within the United States pursuant to these Terms, and you are authorized to resell products only in the United States and only if those products are labeled for resale within the United States (with labels in English only or in both English and Spanish). You may not otherwise resell any of our products except to the extent otherwise preapproved by us in a signed writing with respect to: (1) the applicable products (the "Authorized Products"), and (2) the corresponding applicable geographic area(s) (the "Authorized Geographic Locations"). The right to resell product is non-exclusive, and you do not have any exclusive rights with respect to any Authorized Product, any of the Authorized Geographic Locations, or otherwise. If any product is located in any geographic location outside the United States as a result of your direct and/or indirect engagement and/or attempted engagement in any Activity After Gehl's Sale/Lease (as defined below), directly or indirectly (whether an Authorized Geographic Location or elsewhere outside the United States, the "Non-U.S. Locations"):
- As between the Parties, you are responsible for: (1) ensuring, and you shall at all times ensure, that all manufacturing, packaging and other aspects, attributes, condition, acts and failures to act in any way related to, of and/or in connection with the products prior to and/or at the time at which we provide you (directly or indirectly) with such products (each, an "Activity Before/At Gehl's Sale/Lease"), and all exportation, importation, storage, transportation, handling, uses, distribution, advertising, sales and other aspects, attributes, condition, acts and failures to act in any way related to, of and/or in connection with the products after we provide you (directly or indirectly) with such products (each, an "Activity After Gehl's Sale/Lease") are in full compliance with all applicable Laws outside the U.S. (with no commitment and/or responsibility on our part to add to and/or change any Activity Before/At Gehl's Sale/Lease and/or thereafter and/or any aspect of the products), (2) all taxes and other Damages as a result of your direct and/or indirect engagement and/or attempted engagement in any Activity After Gehl's Sale/Lease in Non-U.S. Locations, and (3) export clearance as the Foreign Principal Party of Interest ("FPPI").
  - Our authorization regarding your right to resell and any related designations we bestow on you (whether as an AUTHORIZED RESELLER or otherwise) are made solely for your benefit and may be continued, revoked and/or limited (whether by product and/or geographic area) solely within Gehl's discretion at any time and from time to time, and you shall be solely responsible for any and all Actions and Losses connected with, arising out of and/or related from such designations, revocations and/or limitations (together, the "Assumed Liability for Bestowed Designations"); provided, however, you may assume our designations continue if we fill for you (and you pay for) at least one shipping container of each Authorized Product every 90-days, you have complied and continue to comply with obligations regarding applicable Laws, you otherwise remain in good standing with us, and we have not notified you and/or communicated to you (via email or in writing) that we have imposed additional restrictions on, and/or revoked, the same. If there are any previous exclusive agreements, arrangements or designations regarding your status in relation to us, they are hereby terminated and superseded and replaced by the non-exclusive authorizations and designations described above.



- As used in these Terms, "Packaging Graphics" means the information on and/or missing from products' labels and other packaging (including (but not limited to) codes and classifications used and/or useful in connection therewith), each printed element of such products' labels and packaging, all advertising, including (but not limited to), in each case, design, content, wording, artwork, label features, product claims, logos, trademarks (registered and unregistered), service marks, trade names, trade dress, nutritional statements, ingredient lists, certifications, and/or health, benefit and/or other claims (as all of the foregoing may be changed from time to time). As used in these Terms, "English-Language Information Upon Which You May Rely" or "Seller-Provided Information" is information that we provide to you that we specifically identify as *English-Language Information Upon Which You May Rely* (using those exact words), which may be and/or include (but not be limited by) the product's English-language label for use if/when the product is sold within the United States, the product's English-language ingredient statement for use if/when the product is sold within the United States, the product's English-language ingredient list for use if/when the product sold in the United States or in the EU and/or GCC, the product's English-language list of functions for food additives for use if/when the product is sold in the EU and/or GCC, and/or the product's English-language nutritional statement for use if/when the product is sold in the United States; provided, however, that no information from a third-party (including (but not limited to) Intertek or another consultant hired to assist in the development of the label) shall ever be deemed to be included in such information. No such Seller-Provided Information shall be deemed to be inaccurate if it was accurate at the time it was provided by us and if it complied with either U.S. federal law or such other law as is referred to within such Seller-Provided Information.
- We understand that you will use some or all of the Seller-Provided Information as part of your process in creating and/or approving Packaging Graphics. Although we may share with you our thoughts about Packaging Graphics and/or provide you with proposals, artwork, samples, labels and/or other Packaging Graphics, and although we at all times reserve the right to reject the use of any Packaging Graphics that we suspect violate a Law, Gehl makes no representation, warranty and/or covenant regarding Packaging Graphics, and you acknowledge that definitions under U.S. Laws may or may not be similar to definitions applicable under non-U.S. Laws (including (but not limited to) definitions of ingredients). You shall prescribe all Packaging Graphics (as defined below) for each product (with us having a veto right to any aspect thereof should we in good faith believe it is in, or could give rise to a, violation of any Law). We make no representation, warranty and/or covenant regarding Packaging Graphics. Notwithstanding anything to the contrary, as between us and you: (i) you shall be solely responsible for the Packaging Graphics, including (but not limited to) the accuracy, completeness and layout thereof, for obtaining and maintaining all supporting documentation, for ensuring that all Packaging Graphics (and all products related thereto) comply in all respects with all applicable Laws, and for any and all Actions and Losses stemming from the foregoing (together, the "Assumed Liability for Packaging Graphics"), and (ii) you hereby represent and warrant that all Packaging Graphics (and all products related thereto) comply, and at all times during each product's shelf life will comply, with all applicable Laws; provided, however, that you shall not be responsible for any of the foregoing to the extent directly caused by inaccurate Seller-Provided Information. You hereby acknowledge and assume the Assumed Liabilities for Packaging Graphics, including (but not limited to) associated Losses during any step of Gehl's manufacturing, packaging, handling, storage, release, transportation, lease and/or sale process and/or in the course of distribution, use, handling, and/or consumption of the products. If any packaging fails to conform to your representations and warranties, Gehl may treat such packaging as obsolete and cease using the same (at your expense).
- You hereby agree to and shall indemnify, defend (at our request) and hold harmless us and our Affiliates and our and our Affiliates' Representatives from and against any and all direct and indirect Actions and any and all judgments and awards resulting therefrom, settlements thereof (to the extent such settlements are made with both your and our approval, which approval shall not be unreasonably withheld or delayed), and direct and/or third-party bodily injuries, illnesses, property damages and Losses connected with, arising out of and/or related to any of the following, even if caused solely or partially by our negligence: the Assumed Liability for Bestowed Designations, the Packaging Graphics, the Assumed Liability for Packaging Graphics, Activities After Gehl's Sale/Lease, any breach by you of these Terms and/or any other agreement between us and you (including (but not limited to) breach of any representation and/or warranty), any negligence and/or willful misconduct by you, any of your Affiliates and/or any of your and/or their Representatives, any recall and/or withdrawal from the marketplace of the products, breach of any Law for which compliance is your responsibility as described herein and/or in any agreement you have with us, any failure to provide adequate warning with respect to any product, and/or any breach of any Law by you, any of your Affiliates and/or any of your and/or such Affiliates' Representatives, and/or, after we have sold the product, by anyone else; provided, however, that you shall not be responsible for any of the foregoing to the extent directly caused by inaccurate Seller-Provided Information. Following the settlement or adjudication of any Action, we shall be entitled to contribution for the indemnification costs and expenses (including (but not limited to) reasonable attorneys' and experts' fees and costs and reasonable defense and investigation expenses) from you to the extent of your indemnification obligations and/or fault by you and/or your Representatives. In the absence of an adjudicated allocation of responsibility and/or fault, we and you shall each make good faith efforts to agree on the allocation between us and you before pursuing any related legal Action against the other.
- If a recall or withdrawal of products is initiated, either voluntarily or by order of any governmental (or quasi-governmental) body, agency, entity or authority (a "Governmental Entity"), we will, at your expense (except to the extent directly caused by inaccurate Seller-Provided Information), provide reasonable assistance to you in developing a recall strategy and in preparing such reports as may be required in connection therewith. You shall promptly notify and provide copies to us of any communications with any Governmental Entity relating to the products and/or such recall (except to the extent such communications are prohibited by Law), and you shall immediately notify and provide copies to us of any communication with any Governmental Entity relating to such products and/or recall to the extent such communication relates to our facility or processes or any assessments of the quality or specifications of any product. If you have reason to believe that any product must be recalled, you shall notify us in writing, as soon as reasonably practical, including (but not limited to) the reasons and explanations underlying that belief, prior to taking any action.

**B. Certain Definitions.** As used in these Terms: "Actions" are claims, lawsuits, administrative proceedings, causes of action, and/or other legal and/or administrative proceedings, of any kind and/or character whatsoever, whether in law or equity, whether known or unknown, past, present or future, suspected or unsuspected. "Affiliates" of a party means individuals and entities that directly or indirectly control, are controlled by, or are under common control with, that party. "Disputes" are disputes, controversies, demands, agreements, obligations, promises and/or acts, of any kind and/or character whatsoever, whether known or unknown, past, present or future, suspected or unsuspected. "Laws" are



federal, state, local, municipal, foreign, international, multinational and/or other administrative orders, constitutions, laws, ordinances, principles of common law, regulations, statutes, rules, guidance, recommendations and/or treaties. "Losses" are debts, liabilities, costs, penalties, fines, losses, deficiencies, judgments, damages and/or expenses, in each case, of any kind and/or character whatsoever (including (but not limited to) reasonable attorneys' and experts' fees and costs and/or reasonable defense and/or investigation expenses), whether known or unknown, past, present or future, suspected or unsuspected. "Representatives" of a party are its Affiliates and its Affiliates' directors, officers, managers, shareholders, members, owners, principals, employees, agents, subcontractors, attorneys, legal representatives, administrators, consultants, advisors, representatives and divisions.

### **C. U.S. Export Control Laws and U.S. Foreign Corrupt Practices Act.**

#### **1. U.S. Export Compliance Laws**

- a. Products, dispensers and related technical data are subject to U.S. export control laws (the "U.S. Export Control Laws").
- b. As part of the express consideration provided for receipt of the products and/or dispensers, Customer and its Representatives shall not (and Customer shall ensure that none of its direct and/or indirect customers and none of their Representatives) export, re-export or otherwise transfer, directly or indirectly, the products, dispensers and/or technical data provided by Gehl in violation of the U.S. Export Control Laws or any other applicable law. Customer shall be responsible for obtaining any necessary U.S. government authorization required to ensure compliance of Customer (and its direct and indirect customers) with the U.S. Export Control Laws. Customer acknowledges that it can contact the U.S. Departments of Commerce, State and Treasury for guidance as to applicable licensing requirements and other restrictions.
- c. Customer shall immediately notify Gehl in writing if Customer's export privileges under U.S. law are denied, suspended, or revoked in whole or in part by any U.S. Government entity or agency.

#### **2. Foreign Corrupt Practices Act**

- a. Customer acknowledges, on its behalf and on behalf of its Representatives, that the U.S. Foreign Corrupt Practices Act, as amended, (the "Act") may govern with respect to Customer's (and its direct and indirect customers') export, sale, distribution, and/or marketing of the products and/or dispensers.
- b. Customer further acknowledges that under the Act, Customer is prohibited from making a payment, gift, promise, or offer of payment or gift, or authorization of payment, gift, or promise, or offer of payment (collectively for purposes of this subsection C, "payment") to any government official, political party or party official or candidate, or employee or official of any public international organization, or anyone acting in an official capacity on behalf of such a person (collectively, "foreign official"), or to any other person who may transfer a payment to any foreign official, for the purpose of obtaining, retaining, or directing business to or for any person by influencing an act or decision of a foreign official in his or her official capacity, or inducing a foreign official to do or omit to do any act in violation of the lawful duty of the official, or securing any improper advantage, or inducing a foreign official to use his or her influence with a foreign government, government instrumentality, or public international organization to affect or influence any act or decision of the government, government instrumentality, or public international organization, or to secure any improper advantage.
- c. As part of the express consideration provided for receipt of products and/or dispensers, Customer shall comply, and shall ensure that its Representatives comply (and that Customer's direct and indirect customers and their Representatives comply) with the Act and all applicable anti-corruption Laws, at all times while engaged in the distribution, sale, and/or export of products and/or dispensers, including (but not limited to) by ensuring that Customer's Representatives (and Customer's customers' Representatives) make no payment (as defined above) or take any action in violation of the Act or any applicable anti-corruption Laws.
- d. Customer agrees not to pay, offer, or promise to pay any fee, bonus, commission, or other payment or anything of value to any person or entity for the purpose of obtaining, retaining, or directing business, or securing any advantage on behalf of Gehl without the prior written approval of Gehl.
- e. Customer agrees to notify Gehl immediately upon learning of a possible violation of the Act or other applicable anti-corruption Law or upon receiving an invitation to take action that might violate the Act or other applicable anti-corruption Law.

**D. Arbitration; U.N. Convention on Contracts.** If you are not a U.S. resident or an entity organized under the laws of any U.S. state, then: (1) with respect to each Dispute arising out of or in connection with these Terms, each order, each other written or electronic communication/document in connection with any of the foregoing and/or breach thereof, including (but not limited to) any question regarding the existence, validity and/or termination of any agreement between us and you (whether sounding in contract, warranty, tort or otherwise) (each of the foregoing, a "Potential Arbitration Dispute"), notwithstanding anything to the contrary, to the extent Gehl so elects (in its sole discretion), such Potential Arbitration Dispute shall be referred to and finally resolved by arbitration under the rules of or by the London Court of International Arbitration (the "LCIA Rules"), which LCIA Rules are deemed to be incorporated into (as if fully restated in) these Terms, where: (a) the number of arbitrators shall be one, (b) the language to be used in the arbitral proceedings shall be English, and (c) the seat, or legal place, of arbitration shall be Milwaukee, Wisconsin, U.S., and (2) these Terms, each Potential Arbitration Dispute and the communications/documents involved in either shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended (collectively, the "Conventions"). For the avoidance of doubt, the Conventions are hereby excluded.

**E. Dispensers.** Dispensers located outside the United States are either (a) leased by us within the United States and removed by Customer (or a third party) from the United States in violation of that lease, or (b) donated by us to a customer of ours who resells our products in Non-U.S. Locations. In the case of dispenser donations, together with the other applicable terms and conditions located in these Terms, the following shall apply:

(1) **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH DISPENSER IS PROVIDED BY GEHL "AS IS" AND "WITH ALL FAULTS" WITHOUT ANY WARRANTIES WHATSOEVER, AND CUSTOMER IS NOT RELYING ON ANY DESCRIPTION, STATEMENT, SPECIFICATION, PHOTOGRAPH OR OTHER ILLUSTRATION REPRESENTING THE DISPENSER. GEHL HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINTERFERENCE OR NONINFRINGEMENT OF ANY THIRD PARTY

INTELLECTUAL PROPERTY RIGHTS, OR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. Any description of a dispenser is for identification purposes only. Customer assumes all risks, including, without limitation, responsibility for damage to property and/or for death and/or personal injury, arising out of and/or related in any way to the dispenser. Customer expressly waives any claim that it may have against Gehl based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Product Liability Claim") with respect to the dispenser and also waives any right to indemnification from Gehl from and/or against any such Product Liability Claim made against Customer by a third party, in each case, to the fullest extent permitted by applicable law. ANY WARRANTY THAT THE LAW DOES NOT RECOGNIZE AS BEING DISCLAIMED OR WAIVED IS LIMITED TO THE DURATION OF TEN (10) DAYS OR SUCH LONGER TIME AS MAY BE REQUIRED BY APPLICABLE LAW. IN THE EVENT OF ANY LIABILITY INCURRED BY GEHL, GEHL'S AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES FROM ANY CAUSE WHATSOEVER IN CONNECTION WITH A DISPENSER WILL IN NO EVENT EXCEED THE DOLLAR AMOUNT PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FOR THE DISPENSERS WHICH ARE THE SUBJECT OF THE CLAIM.

(2) You shall be solely responsible for any and all Actions and Losses connected with, arising out of and/or related from such dispensers (together, the "Assumed Liabilities for Dispensers"). You hereby agree to and shall indemnify, defend (at our request) and hold harmless us and our Affiliates and our and our Affiliates' Representatives from and against any and all direct and indirect Actions and any and all judgments and awards resulting therefrom, settlements thereof (to the extent such settlements are made with both your and our approval, which approval shall not be unreasonably withheld or delayed), and direct and/or third-party bodily injuries, illnesses, property damages and Losses connected with, arising out of and/or related to any of the following, even if caused solely or partially by our negligence: such dispensers, the Assumed Liabilities for Dispensers, breach of any dispenser lease, any recall and/or withdrawal from the marketplace of such dispensers, breach of any Law for which compliance is your responsibility as described herein, and/or any failure to provide adequate warning and/or any failing in connection with Packaging Graphics with respect to any such dispenser. Following the settlement or adjudication of any Action, we shall be entitled to contribution for the indemnification costs and expenses (including (but not limited to) reasonable attorneys' and experts' fees and costs and reasonable defense and investigation expenses) from you to the extent of your indemnification obligations and/or fault by you and/or your Representatives. In the absence of an adjudicated allocation of responsibility and/or fault, we and Customer shall each make good faith efforts to agree on the allocation between us and Customer before pursuing any related legal Action against the other.

17. **Other Fees.** We will not pay for any administrative or handling fees, costs, expenses, or other charges, including, but not limited to, nuisance fees and processing charges.
18. **Guaranty.** With respect to Gehl's®-branded products to be maintained and used entirely within the United States, upon request we agree to sign and deliver with such products our standard Continuing Guaranty for the benefit of our direct customer, which states:

The undersigned, Gehl Foods, LLC ("Seller"), hereby states that each and every article subject to the Federal Food Drug and Cosmetic Act and contained in or comprising each shipment hereafter made by Seller to or on the order of \_\_\_\_\_ ("Buyer") is hereby guaranteed, as of the time and place of such shipment, to be:

1. Not adulterated or misbranded within the meaning of the US Federal Food, Drug and Cosmetic Act, as amended (the "Act");
2. Not an article which may not, under the provisions of Section 404 or 405 of the Act, be introduced into interstate commerce; and
3. If an article which is a color additive, certified or from a batch that is certified (or if an article which contains a color additive, containing a color additive that is certified or from a batch that is certified) by Seller, one or more of its subsidiaries (if any) or one or more of its or their suppliers, in accordance with the Act.

Notwithstanding the foregoing, this guaranty shall not apply to any shipments that conform to Buyer's specifications for such shipments.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER OR ANY OF ITS SUBSIDIARIES (OR ANY OF ITS OR THEIR SUCCESSORS OR ASSIGNS) BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY AND/OR SPECIAL DAMAGES, LOSSES OR EXPENSES (INCLUDING BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, LOST SAVINGS, LOST OR DAMAGE TO GOODWILL OR REPUTATION, AND/OR DEGRADATION IN VALUE OF BRANDS, TRADE NAMES, SERVICE NAMES AND/OR SERVICE MARKS) EVEN IF SELLER HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE, IN EACH CASE, REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE OR LOSS, AND WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION AND/OR OTHERWISE.

This Continuing Guaranty covers only articles shipped or delivered by Seller and shall not extend to the benefit of persons or entities other than Buyer.

This Continuing Guaranty is subject to revocation by Seller upon written notice to Buyer.

19. **Limited Warranty.** In addition to the guaranty provided as set forth above, we hereby warrant that when delivered by us to our direct customer, each Gehl's®-branded product that is labeled for use within the United States, at the time of such delivery:
1. will conform to any and all final written specifications furnished by us;
  2. will have been manufactured, packaged, labeled, and packed by us in compliance with all applicable Laws within the United States, except to the extent any of the foregoing is not our responsibility pursuant to the section of these Terms entitled *No Diverting*; and
  3. will be fit for human consumption (unless such product is a sold dispenser).

Notwithstanding the foregoing, however, we do not warrant product if there has been any of the following, and we shall not be responsible unless there has been none of the following:

- improper transportation, storage, use, modification, tampering or handling of the product by anyone other than us after delivery by us to our direct customer;
- natural expiration of the product after its best-by or expiration date;
- alleged or actual problem related with any information and/or intellectual property of or provided by Customer that Customer requested be placed on or used in connection with the product;
- violation of any Law by or on behalf of Customer and/or any of its Affiliates and Representatives;
- after delivery of the product by us to our direct customer, violation of any Law by anyone other than us; and/or
- negligence, gross negligence, fraud and/or willful misconduct by, and/or the Product's nonconformance with the representations, warranties and guarantees described herein as a result of the acts and/or omissions of, Customer and/or any of its Affiliates and Representatives (including, without limitation, the end consumer), and/or, after delivery by us of the product to our direct customer, by any third-party.

20. **DISCLAIMER OF IMPLIED WARRANTIES; DISCLAIMER OF REPRESENTATIONS OUTSIDE OF WARRANTY.** EXCEPT AS EXPRESSLY STATED IN THESE TERMS, WE HEREBY EXPRESSLY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND/OR WARRANTIES RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE FOREGOING DISCLAIMER DOES NOT AFFECT THE TERMS OF ANY WARRANTY FROM THIRD PARTIES (THAT ARE NOT OUR AFFILIATES AND REPRESENTATIVES). ANY WARRANTY THAT THE LAW DOES NOT RECOGNIZE AS BEING DISCLAIMED OR WAIVED IS LIMITED TO THE DURATION OF TEN (10) DAYS OR SUCH LONGER TIME AS MAY BE REQUIRED BY APPLICABLE LAW.

21. **LIMITATION OF REMEDIES; LIMITATION OF LIABILITY; EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGE.** Customer may not institute any action in any form more than one (1) year after the cause of action has arisen. We shall have no liability to any subsequent purchaser of any product, and/or to the ultimate user of any product or dispenser, in contract, tort, warranty, strict liability or otherwise. Customer's exclusive right for recovery in connection with any defective products and/or dispensers is limited to repair, replacement or refund (at our option) of them, except for our obligations hereunder in connection with any recall and the reimbursement of direct, actual and reasonable costs of third-party losses to the extent directly caused thereby. TO THE MAXIMUM EXTENT ALLOWABLE BY LAW: IN NO EVENT SHALL WE AND/OR ANY OF OUR AFFILIATES AND/OR REPRESENTATIVES BE LIABLE TO CUSTOMER, ANY OF ITS AFFILIATES AND REPRESENTATIVES, AND/OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY AND/OR SPECIAL DAMAGES, LOSSES OR EXPENSES (INCLUDING BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS, LOST SAVINGS, LOST OR DAMAGE TO GOODWILL OR REPUTATION, AND/OR DEGRADATION IN VALUE OF BRANDS, TRADE NAMES, SERVICE NAMES AND/OR SERVICE MARKS) EVEN IF WE HAVE BEEN ADVISED OF THEIR POSSIBLE EXISTENCE, IN EACH CASE, REGARDLESS OF THE FORM OF ACTION, DAMAGE, CLAIM, LIABILITY, COST, EXPENSE OR LOSS, AND WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY), CONTRIBUTION, INDEMNITY, SUBROGATION OR OTHERWISE.

22. **Additional Terms and Conditions.**

- These Terms are the only terms and conditions controlling the purchase and sale between us and Customer. These Terms are the exclusive terms and conditions under which we sell, invoice, ship, and/or deliver our products (including, but not limited to, any dispensers deemed to have been sold) and under which we provide, lease, ship, and/or deliver our dispensers. These Terms supersede and replace in their entirety any and all other terms and/or conditions relating to the subject matter hereof, whether oral, written, electronic, or implied, if any, between us and Customer with respect to the subject matter hereof, including, but not limited to, our previous documents entitled 'Policies', 'Ordering Information and Procedures' and 'Pick-up/Delivery Instructions'.
- Acceptance of an order by us does not constitute acceptance by us of any term, condition or provisions appearing on or referenced in such order and/or any other written or electronic document submitted to us. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CUSTOMER OR ON CUSTOMER'S BEHALF OR ANY ATTEMPT TO VARY, IN ANY DEGREE, ANY OF THE PREPRINTED TERMS OR CONDITIONS STATED HEREIN SHALL NOT OPERATE AS A REJECTION OF AN OFFER BY US OR OF THESE TERMS AND CONDITIONS (EXCEPT TO THE EXTENT THERE IS VARIANCE IN AN ORDER'S PRODUCT DESCRIPTION, PRODUCT QUALITY, AND/OR PRICE), BUT SHALL INSTEAD BE DEEMED TO BE A MATERIAL ALTERATION HEREOF. THIS OFFER AND THESE TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTED WITHOUT SAID ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS OR SAID VARIANCES, AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN. CUSTOMER AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS AND SHALL BE DEEMED TO HAVE ACCEPTED THEM BY SIGNING AND DELIVERING THEM OR AN ACKNOWLEDGEMENT OF THEM, BY DELIVERING (DIRECTLY OR INDIRECTLY) AN ORDER REFERENCING A PRODUCT OR DISPENSER OF OURS, AND/OR BY ACCEPTING RECEIPT (DIRECTLY OR INDIRECTLY) OF A PRODUCT OR DISPENSER OF OURS. We shall not be bound by any different or additional terms or conditions (1) contained in any purchase order, pre-printed forms, online agreements, or in any other documents or communications issued directly or indirectly by you, or (2) arising from prior courses of dealing, usages of trade, or verbal agreements not reduced to a signed writing by us. Any such different or additional terms or conditions are hereby rejected, and shall be deemed null and void, without the need for us to expressly reject such terms and conditions. If your purchase order is inconsistent with these Terms, our acceptance of your order shall constitute a counter offer, and you will be deemed to have accepted these Terms unless you notify us to the contrary within five days of you receiving our acceptance, our order confirmation or the product, whichever is earlier. To the extent that an invoice is deemed to be acceptance of your purchase order, such acceptance is

expressly made on condition of assent by you to these Terms, and your acceptance of delivery of any product and/or dispenser from us shall constitute such assent.

- FOR YOUR CONVENIENCE, WE MAY PERMIT THE USE OF YOUR EDI OR OTHER WEB-BASED OR ELECTRONIC SYSTEM AND/OR MEANS ("EDI Systems") TO SUBMIT ORDERS AND/OR SEND AND/OR RECEIVE COMMUNICATIONS TO AND/OR FROM US, BUT NO MATTER WHAT TERMS AND/OR CONDITIONS ARE CONTAINED IN AND/OR SUBMITTED TO US THROUGH SUCH EDI SYSTEM, EVEN THOSE FOR WHICH AN EMPLOYEE OR OTHER REPRESENTATIVE OF OURS WAS REQUIRED TO CLICK A BOX TO ACCEPT, HAS CLICKED A BOX TO ACCEPT, AND/OR HAS OTHERWISE INDICATED HIS, HER AND/OR OUR ASSENT THERETO, AND WITHOUT REGARD TO HOW DATA FIELDS ARE LABELED THEREIN AND/OR HOW THEY ARE DESCRIBED, NEITHER WE NOR ANY EMPLOYEE OR OTHER REPRESENTATIVE OF OURS SHALL BE BOUND BY ANY PROCESS, INTERPRETATION, TERM AND/OR CONDITION THAT IS IN ADDITION TO AND/OR IN CONFLICT WITH THESE TERMS. By indicating your desire to have us use your EDI Systems, you acknowledge and agree with the foregoing, understanding that we cannot be expected to read nor agree to all customers' EDI Systems' terms, conditions and limitations.
- We are not responsible for, and shall not be liable for any losses or damages resulting from, any delay and/or inability to perform if due to the following: any situation and/or circumstance whose cause is beyond our reasonable control, including, but not limited to, those that are an act of God (including, but not limited to, any hurricane, typhoon, drought, earthquake, lightning, snowstorm or other adverse weather condition or natural calamity); an act or threat of war (including, but not limited to, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, rebellion, revolution, insurrection, military or usurped power, or civil war), terrorism, civil disorder, nuclear or utility incident, manmade environmental or natural calamity, explosion, fire, embargo, change in the Laws, epidemic, pandemic, infectious disease, illness, injury, famine, plague, quarantine, travel restriction, accident, flood, sabotage, or damage to tangible property; a riot, lockout, strike, slowdown, injunction, or labor dispute, in each case, even if reasonably preventable by us by acquiescing to labor's demands; a delay in transportation; or a delay, disruption or shortage of energy, utilities, labor, materials, equipment or facilities, including, but not limited to, a delay or failure of a third-party vendor selected by us to be used in our performance, to provide that which is reasonably required for performance of such obligations.
- Customer shall comply with all applicable Laws, including, but not limited to, Laws pertaining to the safe and sanitary warehousing and transporting of food products. Customer will permit audits to verify compliance with the foregoing by our third-party representatives granted we agree that we will act in good faith to minimize any disruption to Customer.
- No provision of these Terms shall be deemed waived, amended, modified, superseded or otherwise altered by us and/or by Customer except as expressly permitted within these Terms and/or except as expressly set forth in a writing signed by an officer of ours and by Customer.
- Headings and captions are inserted and used solely for convenience of reference and shall not control or otherwise affect interpretation.
- Any writing signed in connection with these Terms may be signed in separate counterparts each of which shall be deemed an original and all of which together shall be deemed to be one original. Delivering a copy of a handwritten signature via electronic means or otherwise delivering an electronic image of a cursive signature (including one that complies with the U.S. federal E-SIGN Act of 2000 (such as DocuSign) and/or one in a .pdf format) shall be deemed to have the same legal effect as delivering an original signed document. Neither we nor Customer may object to the use of such electronic documents (and/or electronic image signatures) as a defense to the formation of a contract, forever waiving any such defense, except to the extent that such defense relates to lack of authenticity (and/or such defense would have otherwise been available to an original wet-ink signed document); however, names that are merely typed (and sent via electronic means) and electronic checkmarks/markings and/or other keystrokes by us without including an electronic image of a cursive signature are not the equivalent of written and signed documents.
- Any delay or failure by us to exercise any right or remedy shall not constitute a waiver by us to thereafter enforce such right and obtain such remedy. Our rights and remedies under these Terms are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.
- If any term or condition of these Terms is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, then to the extent allowed by law, the same shall (a) be construed and enforced so as to best effectuate our original intention, and (b) not affect the other terms or conditions hereof or the whole of these Terms. We and Customer agree that each of the obligations under these Terms is separate, independent and divisible from the others.
- Neither these Terms nor any right or obligation hereunder may be assigned, transferred, delegated, pledged, hypothecated or otherwise disposed of, in any voluntary or involuntary manner, whether by transfer, merger or reorganization or similar transaction, consolidation, sale of all or substantially all properties or assets, acquisition, affiliation, division, conversion, dissolution, liquidation or otherwise, by you without our prior written consent, which consent shall not be unreasonably withheld or delayed. Any purported assignment without such consent shall be null and void and unenforceable against us. No permitted assignment shall relieve the assignor of its obligations incurred prior to the date of the assignment hereunder. Subject to the foregoing, these Terms and the rights and obligations of us and you hereunder and thereunder shall be binding upon and inure to the benefit of our and your successors in interest and permitted assigns.
- If we find it necessary to hire legal counsel to enforce any aspect of these Terms and/or to recover any damages for breach of these Terms, we will be entitled to recover from you reasonable attorneys' fees and other expenses incurred in connection with such enforcement and/or recovery.

- No agent, employee or Representative of ours has any authority to bind us through any actual or alleged affirmation, representation, or warranty in any way different from the terms and conditions set forth in these Terms, except by a writing signed by an officer of ours (or by an employee of ours expressly authorized to sign by such an officer).
- You hereby agree to and shall indemnify, defend (at our request) and hold harmless us and our Affiliates and our and our Affiliates' Representatives from and against any and all direct and indirect Actions and any and all judgments and awards resulting therefrom, settlements thereof (to the extent such settlements are made with both your and our approval, which approval shall not be unreasonably withheld or delayed), and direct and/or third-party bodily injuries, illnesses, property damages and Losses connected with, arising out of and/or related to any of the following, even if caused solely or partially by our negligence: (1) any breach by you of your representations, warranties, covenants and/or obligations set forth in these Terms, (2) the handling of products after title to such products has pass to you pursuant to these Terms, (3) the distribution, sale, advertisement, storage or transportation of products after title to such products has pass to you pursuant to these Term, (4) the use in connection with products sold by us to you of any trademarks, trade names, service marks, logos, or other labeling information owned or provided directly or indirectly by you (including (but not limited to) any claims of infringement and/or misappropriation relating thereto), (5) once title transfers to you, any and all customs, duties, sales, use, occupational excise, value added or other taxes, assessments, charges or fines imposed upon or applicable to the price, sale and/or delivery of the products by any Governmental Entity, (6) any negligence, willful misconduct, fraud and/or other tortious act and/or failure to act by you, any of your Affiliates and/or any of your and/or their Representatives, (7) any breach of any Law by you, any of your Affiliates and/or any of your and/or such Affiliates' Representatives, and/or, once title transfers to you, in connection with such products by anyone else, and/or (8) for any customized product, any requirements of yours. Following the settlement or adjudication of any Action, we shall be entitled to contribution for the indemnification costs and expenses (including (but not limited to) reasonable attorneys' and experts' fees and costs and reasonable defense and investigation expenses) from you to the extent of your indemnification obligations and/or fault by you and/or your Representatives. In the absence of an adjudicated allocation of responsibility and/or fault, we and you shall each make good faith efforts to agree on the allocation between us and you before pursuing any related legal Action against the other.
- EXCEPT AS REQUIRED BY U.S. FEDERAL LAW, THESE TERMS, EACH SIGNED AGREEMENT, EACH ORDER, EACH WRITTEN OR ELECTRONIC DOCUMENT IN CONNECTION HERewith OR THEREwith, THE RIGHTS AND OBLIGATIONS OF US AND YOU IN CONNECTION HERewith OR THEREwith, AND ALL CLAIMS RELATING TO OR ARISING OUT OF ANY OF THE SAME OR THE BREACH THEREOF (WHETHER SOUNDING IN CONTRACT, WARRANTY, TORT OR OTHERWISE) SHALL BE GOVERNED, CONSTRUED AND ENFORCED IN ALL RESPECTS (INCLUDING, WITHOUT LIMITATION, AS TO VALIDITY, CONSTRUCTION, INTERPRETATION, CAPACITY, PERFORMANCE AND EFFECT) BY AND IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF WISCONSIN, U.S., WITHOUT REGARD TO CONFLICTS OF LAWS RULES.
- ANY LITIGATION SHALL BE BROUGHT EXCLUSIVELY IN MILWAUKEE COUNTY, WISCONSIN, AND EACH PARTY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN AND WAIVES THE RIGHT TO CHANGE VENUE. SUCH WISCONSIN STATE AND FEDERAL COURTS SHALL CONSTITUTE THE EXCLUSIVE COURTS OF COMPETENT JURISDICTION AND VENUE FOR PURPOSES OF ANY DISPUTE (INCLUDING, WITHOUT LIMITATION, ALL QUESTIONS OF JURISDICTION AND ALL DISPUTES ARISING UNDER, REGARDING OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED IN THESE TERMS, AN ORDER, OR ANOTHER WRITING SIGNED BY BOTH US AND YOU). Notwithstanding the foregoing: (1) a final judgment in any such action may be enforced in any other jurisdiction by suit on the judgment, and (2) any action for equitable relief may be brought in any other court having personal jurisdiction over the defendant.

**These Terms are subject to change (including, but not limited to, addition, modification and/or deletion) by us at any time without notice. The latest version will be posted on our website at <https://www.gehlfoodandbeverage.com/terms-sales-GFB>. The version of these Terms that is in effect on the date an order is placed shall govern that order.**

updated 2024.11.26 DM#584515 (word) and DM#650754 (pdf)