MARX FOODSERVICE

COD TERMS OF SALE

Sales Rep: _____

Restaurant/Establishment Name: _____ Phone: _____

Contact Name: _____ Email: _____

Delivery Address: _____

Delivery Instructions: _____

TERMS OF SALE:

Marx Companies, LLC (Marx Foodservice) and the undersigned (Customer) agree as follows:

1. These Terms of Sale govern all sales made by Marx Foodservice to Customer. These Terms of Sale do not create an exclusive purchase or supply agreement between the parties, do not impose any minimum purchase or sale quantities, and do not create any ongoing relationship between the parties.

2. Customer agrees to accept delivery of all products that it orders from Marx Foodservice. Customer acknowledges that all products are subject to availability and that Marx Foodservice reserves the right to impose quantity limits on any order, to reject all or part of an order for any reason, and to discontinue products or services without notice.

3. If Customer's check is returned for any reason, Customer will be invoiced $20 for each check returned. Customer will pay Marx Foodservice interest on the outstanding balance at the rate of one percent (1%) per month or the maximum rate permitted by law.

4. If Customer wishes to return products or receive a refund or credit, then Customer must make such request to Marx Foodservice in writing within 24 hours after receipt of such products. Marx Foodservice, in its sole discretion, will decide whether to allow a return or refund.

5. Customer and Marx Foodservice agree that they are both "merchants" under applicable law. Customer acknowledges that it has not expressed any particular purpose for which Customer intends to use the products ordered, and Customer further acknowledges that it is not relying on any sample, description, affirmation, or promise made by Marx Foodservice concerning the products ordered. CUSTOMER HEREBY WAIVES ANY EXPRESS OR IMPLIED WARRANTY RELATING TO THE PRODUCTS.

6. Customer agrees that its remedies under these Terms of Sale are limited to a refund of the purchase price or a credit against future purchases, in Marx Foodservice's sole discretion, which remedies are sole and exclusive. Customer agrees that in no circumstances will Customer be entitled to any consequential or incidental damages, or to performance or replevin. CUSTOMER HEREBY WAIVES ANY RIGHT TO PUNITIVE DAMAGES TO THE EXTENT SUCH WAIVER IS PERMITTED BY LAW.

7. These Terms of Sale may only be modified by a writing signed by Marx Foodservice and Customer. A fax copy of these Terms of Sale will have the same legal effectiveness as an original. No waiver by either party of any breach of any provision will be deemed or construed as a waiver of any subsequent breach.

8. When Customer is a company, the person who signs this agreement on behalf of Customer agrees to be jointly and severally responsible for all obligations incurred as a result of purchases made after the date on these Terms of Sale.

9. In the event that Marx Foodservice is required to retain or consult legal counsel to recover from Customer any unpaid or overdue amount, Customer will reimburse Marx Foodservice for all costs and attorneys' fees incurred by Marx Foodservice to collect such amount, including any such costs or attorneys' fees paid in any resulting litigation.

10. The laws of the state of Washington, without regard to the conflict of law principles thereof, shall govern any dispute arising out of these Terms of Sale, the sale or shipment of any products from Marx Foodservice to Customer, or the business relationship between Marx Foodservice and Customer. In the event of any litigation between the parties, Marx Foodservice and Customer consent to exclusive venue in state or federal court located in Seattle, Washington, and both parties consent to personal jurisdiction in those courts.

I agree to these Terms of Sale.

Signature: _____ Title: _____

Print Name: _____ Date: _____

Company Name: _____