

Terms and Conditions – Schedule “A”

On the terms and conditions set forth herein, ChefCali, Inc. or its assigns (ChefCali), agrees to provide and Customer agrees to obtain the services described on the facing page hereof, all upon the terms and conditions hereinafter set forth.

1. SERVICE TERMS AND CONDITIONS

- (a) **Services to be Provided.** ChefCali agrees to provide the services specified on the facing page hereof. If so requested by Customer, ChefCali may agree to provide additional services, which shall be described in writing and which shall be effective upon acceptance by ChefCali, and which shall be governed by and subject to these Terms and Conditions.
- (b) **Terms.** Unless otherwise agreed to in writing, all services are provided at ChefCali time and material rates of \$100 per hour.

ChefCali may change its time and material rates at any time and from time to time upon written notice to Customer thereof. Its rates are billed in 15-minute increments. Travel fee from a ChefCali service facility to Customer's ship-to address is the greater of (1) \$50.00, or (2) travel fee rates specifically indicated on facing page hereof, or (3) travel fee rates based on actual costs incurred, which at sole discretion of ChefCali, will be billed at the hourly labor rates quoted above. Regular service hours are 8 a.m. to 8 p.m., Monday through Saturday, excluding ChefCali holidays. After-hour services are billed at 150% of the standard rate.

2. PAYMENT TERMS

Service charges shall be invoiced by ChefCali and are due and payable on delivery, or if written credit approval has been granted, within 30 days of the date of invoice. Any payments not made when due will bear interest at the rate of 1.75% per month or any portion of a month (or if less, the highest rate permitted by applicable law) from the date due until the date paid. Customer's failure to make timely payment may result, at ChefCali's discretion, in revocation of credit, delay or cessation of deliveries and services and/or termination of this Agreement and ChefCali shall be entitled to exercise any and all remedies available to it at law or in equity. All prices and fees herein set forth are exclusive of sales, use, rental, and similar taxes. Customer agrees to be responsible for all federal, state, municipal and other sales, use and other taxes and fees, however designated, levied on the services and fees contemplated by this Agreement, exclusive, however, of taxes based on the net income of ChefCali.

3. SITE ACCESS

For services at a Customer-provided location, Customer agrees to provide ChefCali personnel with such physical access to Customer's facilities as is required to perform the services contemplated by this Agreement, and to provide a safe working environment for ChefCali's employees when on Customer's premises.

4. DISCLAIMERS OF WARRANTIES

CHEFCALI DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SERVICES PROVIDED TO CUSTOMER HEREUNDER, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5. LIMITATIONS OF LIABILITY

CHEFCALI SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED BY CHEFCALI TO CUSTOMER HEREUNDER, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, WASTED PERISHABLES, OR FOR ANY DAMAGES OR SUMS PAID BY CUSTOMER TO THIRD PARTIES, EVEN IF CHEFCALI HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE. CHEFCALI SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCE BEYOND REASONABLE WEAR AND TEAR FOR RESTORATION OR REPLACEMENT OF ANY CUSTOMER PROVIDED COOKING FACILITIES OR EQUIPMENT. FOOD INGREDIENTS USED AND PREPARED BY CHEFCALI ARE SOLD AND PROVIDED AS IS WITH ANY AND ALL FAULTS. CUSTOMER AGREES THAT THE LIABILITY OF CHEFCALI ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF THE ACTUAL DIRECT DAMAGES INCURRED BY CUSTOMER OR A REFUND OF THE AMOUNT PAID FOR THE SERVICES GIVING RISE TO THE LIABILITY. Customer acknowledges that ChefCali's pricing of services provided hereunder contemplates the allocation of risk provided for by the disclaimers of warranty and limitations of liability herein set forth.

6. FORCE MAJEURE

ChefCali shall not be liable for any delays beyond the reasonable control of ChefCali which affect ChefCali or any of ChefCali's suppliers, including but not limited to delays caused by unavailability or shortages of products, natural disasters, acts of war, acts or omissions of Customer, fire, strike, riot, acts of government, unavailability or shortage of materials, labor, fuel or power through normal commercial channels at customary and reasonable rates, damage or destruction at ChefCali's or Customer's facilities, or transport failure.

7. GENERAL

This Agreement shall be governed by the laws of the State of Illinois, exclusive of its choice of law rules. The terms and conditions of this Agreement constitute the entire understanding between the parties relating to the subject matter hereof, and supersede any and prior communications or understandings, written or oral. Terms and conditions set forth on any purchase order or other document submitted by Customer shall have no force or effect. This Agreement may be amended only in a writing signed by both of the parties hereto. This Agreement may not be assigned by Customer without the prior written consent of ChefCali thereto, which shall not be unreasonably withheld, and any purported assignment made without such consent shall be null and void. Any waiver by ChefCali of any breach or default by Customer hereunder shall not constitute a waiver of any other terms and conditions or of any other breach or defaults hereunder. In the event of Customer's breach of any of the terms hereof, Customer shall reimburse ChefCali for all costs, including reasonable attorneys' fees, incurred by ChefCali as a result thereof.