

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.

Except to the extent Gehl Foods, LLC, otherwise agrees in signed written agreement and, in each case, to the extent the other party ("you" or "Customer") also agree(s) and such exception/amendment/agreement is made pursuant to and in compliance with these Terms (each, a "Signed Agreement"):

1. In General.

- These Terms govern all products and dispensers provided by Gehl Foods, LLC ("we" or "us" and in the possessive, "our" or "ours"), and we only provide products and dispensers subject to these Terms.
- You accept and agree to be bound by these Terms if you order, purchase, or accept any product or dispenser directly or indirectly from us or if you otherwise incorporate, assent to, accept, and/or agree to 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 to/from you, and the version so incorporated shall be the unnegotiated version at www.gehls.com/terms-sales.pdf (the "Unnegotiated Terms"), 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.

- Please submit orders to:

Product Orders

Fax: 262-251-9597

Email: Truckorders@gehlfoods.com

Dispenser Orders

Internet: <http://www.gehls.com/Gehls/DispenserPrograms/HofTop2.htm>

Mail: Gehl Foods, LLC, P.O. Box 1004, Germantown, WI 53022

Fax: 262-250-6847

- When ordering, regarding credit and payment, please:

Product Orders

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.

Dispenser Orders

A credit card may be used by ordering online at the internet address above. Dispensers are not otherwise ordinarily ordered on credit. Orders for dispensers that are prepaid by check will be held for at least seven business days while the check clears. No additional time is required for money orders or cashier checks.

- When placing an order, please indicate:

Product Orders

Name of the purchaser

Whether the order is for delivery or pickup*

*An allowance is available for some pickup orders.

Please contact one of our sales representatives for details.

Shipping address, if applicable

Billing address, if applicable

Contact information:

- name of an individual we can contact
- the individual's title, if applicable
- company name, if applicable
- address
- email address
- phone number
- fax number, if available

Purchase order number

Our item number for each product ordered

Flavor of each product ordered

Pack size of each product ordered

Quantity of each type of product ordered*

* Partial pallets must be ordered in full layers (per our ti).

Total number of cases of all products ordered*

*Minimum order size: full pallet layers per item and at least either 2000 pounds for pick up orders or 6000 pounds for delivered orders.

Dispenser Orders (if Not Placed Online)

Name of the lessee (user of the dispenser)

Shipping address

Contact information:

- name of an individual we can contact
- the individual's title, if applicable
- company name, if applicable
- address
- email address
- phone number
- fax number, if available

Our item number for each dispenser ordered

Color of each dispenser ordered

Whether it is a single or dual dispenser

Quantity of each type of dispenser ordered

Total number of dispensers ordered

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

- For products normally stocked, a lead time of 14 business days 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. Our estimates of pickup, shipment and delivery dates do not account for delays that will occur during holiday weeks.
- 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 accepted orders on the date the dispenser ships.

3. Orders in General.

- All orders are subject to our acceptance or rejection in whole or in part. If we reject an order because a product is currently unavailable, please submit a new order when that product becomes available. We do not backorder products.
- If we reject only part of an order because one or more products are unavailable, we will short the order unless we receive instructions within 48 hours to cancel the entire order instead. 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, you/Customer will be deemed to have accepted it unless we receive a rejection of it within 48 hours of our communication to Customer or unless we indicate that we will take other action.
- Customer will not propose a change to an order within 48 hours of any pickup date (or within 72 hours of any shipment or delivery date) that had been previously estimated by us or requested by Customer. All proposed changes are subject to our acceptance or rejection in whole or in part. Please do not assume that we have received a proposed change unless we have sent written or electronic acceptance of the same.

4. Dispensers.

- Our dispensers are never sold. 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 (our "Standard Lease").
- As it relates to a dispenser order (and the provision, lease, shipment, and 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, the version of our Standard Lease that is in effect on the date that order is placed shall be the Applicable Lease and the Effective Date (as defined therein) shall be 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 delivery error, damage in shipment, or any other apparent damage or defect, Customer must reject the affected products at the time of delivery (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 contact 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.
- 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 law, rule, or regulation 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 by us at any time without notice.
- As described in the Ordering Instructions, Customer shall order partial pallets only in full layers (based on our ti) per item.
- Bracket pricing for products is based on total product weight of the shipment with a maximum of a full truckload per order.
- As described in Ordering Instructions above, an allowance is available for some pickup orders. This pickup allowance is a per-pound allowance. The total pickup allowance applicable to an invoice is the per-pound pickup allowance multiplied by the actual number of pounds of product being invoiced that was picked up. We will deduct any applicable total pickup allowance directly from our invoice.
- 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. 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 later of the date the payment is received in our account or the date we receive the remittance notification to ar@gehlfoods.com.
 - for payment made via U.S. mail: the postmark date on the remittance envelope.

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 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, Delivery and Shipment.

- 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 product available for pickup (or ship or deliver, 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 product, any charges by its carrier will be for Customer's account and are the sole responsibility of Customer.
- If Customer has not elected to pick up product, Customer will pay for any charges of the carrier 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 appointments by Customer, and Customer is responsible to pay 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, delivery, and shipping. 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 for a pickup is at least 2,000 pounds and full pallet layers per item.
- Pickup orders require a loading appointment made at least 24 hours in advance.
- 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.
- Please contact us at via email at 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.
- Our pickup address will be at one of the following locations (please confirm which is applicable when making your appointment):

Gehl Foods, LLC
Freistadt Warehouse
N120 W19000 Freistadt Road
Germantown, Wisconsin 53022

Gehl Foods, LLC
Whitney Warehouse
W185 N1300 Whitney Drive
Germantown, WI 53022

- 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 so that we can reschedule the pickup to the next available timeslot.
- 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 federal, state and local laws, rules and regulations, including, but not limited to, the laws, rules and regulations 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. The only exceptions are for any applicable pickup allowance (as described in Ordering Instructions above) unless a deduction or other form of payment has been agreed to by us in a signed writing. No other deductions 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 free 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. Reserved.

13. Allowances.

- If, in our sole discretion, we ever offer to provide any allowance, credit, 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.
- With the exception of any applicable pickup allowance, 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 may be taken from our invoices. Invoices and applicable documents for an allowance must be received by us within 45 days of the end of each claim period in which they are earned or such allowances 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 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 a change in the nature of, our allowance programs) and/or undocumented claims will be charged back for repayment or, at our option, we will reduce the payment of 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.

14. **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.
15. **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.
16. **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 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.
17. **No Diverting.** Customer is authorized to sell in the United States only, unless preapproved by us in writing. Inbound or outbound diverting of our products is expressly prohibited.
18. **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.
19. **Additional Terms and Conditions.**
 - Agreements, programs, details, and other terms and conditions signed or provided by us in written or electronic form are incorporated into these Terms as if fully restated herein, and these Terms are incorporated into them as if fully restated therein.
 - 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 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'.
 - 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 (UNLESS THERE IS VARIANCE IN AN ORDER'S DESCRIPTION, 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.
 - Customer will comply with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the laws, rules, and regulations 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, or modified by us or by Customer unless such waiver, amendment, or modification is in a writing signed by an officer of ours and by Customer. 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.
 - Copies of handwritten signatures sent via electronic means are the equivalent of written and signed documents. You consent thereto and agree that you will not object to the use of such electronic documents; however, names that are merely typed and sent via electronic means 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.

These Terms are subject to change by us at any time without notice. The latest version will be posted on our website at www.gehls.com/terms-sales.pdf. The version of these Terms that is in effect on the date an order is placed shall govern that order.

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