



9990 Gantry Rd
Philadelphia, PA 19115
215-673-3520 | geminibe.com

NOTE: Our attached Terms and Conditions of Sale were revised effective January 1st, 2025.

Terms and Conditions of Sale

1. Applicability:

The terms and conditions stated below are incorporated into and constitute part of the order (the "Order") that you ("Buyer") place or submit in respect of the products, items, equipment, materials and/or parts relating thereto (the "Equipment") provided by Gemini Bakery Equipment Company and its subsidiaries ("Seller"). These terms and conditions shall be binding upon Buyer unless otherwise stated and agreed to in writing by the Seller.

2. Warranty:

NEW EQUIPMENT WARRANTY APPLIES ONLY IF INSTALLATION AND STARTUP SUPERVISION IS CONTRACTED BY BUYER AND PERFORMED BY SELLER'S AUTHORIZED REPRESENTATIVE.

- New equipment is warranted to be free from material defects for a period of twelve (12) months from shipment date, except for non-warranted wearable or disposable components, including belts, light bulbs, bushings, bearings, wear pads, etc. ("Non-warranted Equipment").
- Replacement parts are warranted to be free from material defects for a period of sixty (60) days from shipment date, except for Non-warranted Equipment.
- Rebuilt equipment, parts and components are warranted to be free from material defects for a period of six (6) months from shipment date, except for Non-warranted Equipment.
- Service labor is warranted for a period of thirty (30) days.

All warranted parts proving defective during the warranty period, based on Seller's examination, will be repaired or replaced within a reasonable timeframe, upon prompt written notice of the material defect to Seller. Labor and freight costs to replace warranted parts are the responsibility of Buyer.

Seller reserves the right to deny warranty claims for damaged or missing parts if Buyer or Buyer's representative opens crating or packaging without Seller's authorized representative present and Buyer does not report damaged or missing components to Seller within two (2) business days thereafter.

Seller's warranty is void where equipment has been altered or modified by anyone other than Seller's authorized representative, damaged in shipment, or subject to a lack of or improper maintenance, improper use or application, accident, improper installation or improper storage.

SELLER'S WARRANTY AS STATED ABOVE IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, AND OF ALL OTHER LIABILITIES AND OBLIGATIONS ON SELLER'S PART. THE REMEDY OF REPAIR OR REPLACEMENT SHALL BE THE ONLY REMEDY OF BUYER AND THE ONLY LIABILITY OF SELLER. EXCEPT AS PROVIDED ABOVE, THE EQUIPMENT IS PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT. ANY USE OF THE EQUIPMENT IS AT BUYER'S SOLE RISK. IN NO



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EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOSS OF USE, LOSS OF PROFITS OR REVENUE, AND INJURY TO PERSONS, CAUSED BY THE NONCONFORMITY OF GOODS OR SERVICES.

3. Specifications / Regulations

Equipment will be designed and built to Seller's prevailing standards unless Buyer's specifications have been expressly incorporated into Seller's proposal. This includes, but is not limited to, federal standards and regulations for design and operation of the equipment, mechanical and electrical components, materials of construction, equipment finish, enhanced safety guarding and enhanced equipment access features. Seller does not guarantee compliance to state and local codes. Any costs or delays incurred to meet state and local codes will be at Buyer's expense.

4. Delivery / Force Majeure

Delivery of Equipment shall be made FCA Seller's Factory in accordance with INCOTERMS 2020. Title to Equipment shall transfer to Buyer simultaneously with transfer of risk of loss pursuant to the applicable INCOTERMS.

It is Buyer's responsibility to secure adequate insurance coverage for the Equipment while it is in transit, and to ascertain the condition of the Equipment on arrival. The delivering carrier must note any signs of damage to container or contents on the freight bill before Buyer accepts the goods. Buyer must notify the delivering carrier and request an inspection of goods within fifteen (15) days if concealed damage is discovered after Buyer has accepted the shipment. Buyer must note, on the freight bill, any discrepancy between the number of packages shown on the freight bill and the actual number of packages received by the delivering carrier before Buyer accepts the goods.

If Seller is obligated with respect to installation, then Seller shall not be responsible for any loss, liability or charge of any kind by reason of any delay in the completion of such installation occasioned by unavailability of trained personnel, defects in the Equipment, unavailability of parts, or any other circumstances beyond the immediate control of the Seller. In the event Seller should otherwise fail to deliver within the specified delivery date then its sole liability shall be to return a prorated portion of the purchase price received from the Buyer.

Seller shall not be liable for any damages sustained by Buyer due to delay in delivery caused by fire, explosion, war, insurrection, accidents, strikes, labor disputes, floods, riots, acts of God, or other causes beyond Seller's immediate and reasonable control.

5. Software License

To the extent the Equipment includes any Seller-supplied software or software components ("Software"), for the control of Equipment or other systems supplied by Seller or otherwise, Buyer and its end users of the Equipment are granted a limited, non-exclusive, and non-transferable license to use such Software during the term of this Order solely for the operation of the applicable Equipment or system for which the Software is originally supplied. Buyer acknowledges that any Software provided under this Order is licensed, not sold, and that Buyer obtains no rights in the Software other than as licensed hereunder. Buyer shall use Software only in the form provided by Seller, and only for Buyer's internal use. Buyer shall not rent, sell, assign, lease, sublicense, transfer, or provide any copies of any Software or otherwise allow any third party to access or use the Software without the express prior written permission of Seller. Buyer and its representatives shall not attempt to alter, modify, customize, copy, or misappropriate any feature of the Software or



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attempt to derive the source code, source files, or structure of any portion of the Software by any form of reverse engineering, disassembly, or decompilation, except to the extent permitted by law.

6. Termination / Payment

Seller may terminate this Order upon prior written notice to Buyer, in case Buyer breaches any of its material obligations under this Order, to the extent such breach is not remedied within a reasonable time period as agreed by the Parties. If Buyer's financial condition is or becomes unsatisfactory to Seller, Seller reserves the right to: (a) require payment from Buyer on a Cash In Advance (CIA) basis; (b) require a letter of credit or other acceptable security before shipment; or (c) cancel shipment at any time prior to delivery of the Equipment without further obligation or liability on the Seller's part. Upon any default, Seller shall have the rights and remedies of a secured party under the Uniform Commercial Code.

7. Cancellation

Buyer may cancel this Order only upon written notice and payment to Seller subject to the following terms:

- If Buyer cancels prior to Seller purchasing component parts and/or manufacturing any Equipment subject to this Order, Buyer agrees to pay a cancellation fee of 20% of the applicable purchase price.
- If Buyer cancels after Seller commences purchasing of component parts and/or manufacture of the relevant Equipment, Buyer agrees to pay a cancellation fee calculated by Seller based on costs incurred up to the date of cancellation plus Seller's reasonable anticipated profit had the cancellation not occurred.
- If Buyer cancels after Seller completes a majority of the manufacturing required for the applicable Equipment, Buyer agrees to pay a cancellation fee of 100% of the purchase price.

8. Tax

Buyer is responsible for all applicable taxes and duties that are levied or imposed by reason of the Equipment, Software, or other goods or services licensed or purchased under this Order, excluding Buyer's income taxes.

9. Severability

In the event that any part of this Order shall be declared void, invalid, or unenforceable, then the remainder of this Order shall remain unaffected and enforceable according to its terms.

10. Applicable Law / Disputes

In the event of any dispute between the parties arising out of this Order, the matter shall be settled by arbitration in the Commonwealth of Pennsylvania and in the city of Philadelphia, in accordance with the rules of the American Arbitration Association. In any action or proceeding to enforce rights under this Order, the prevailing party will be entitled to recover reasonable costs and attorneys' fees. The law of the Commonwealth of Pennsylvania, including but not limited to Pennsylvania's Uniform Commercial Code, governs this agreement and any disputes related to this Order, without reference to its choice of law rules.