☐ NEW OTIS CUSTOMER

☐ EXISTING CUSTOMER CHANGE REQUEST

Recurring Charge Credit Card Authorization Form

By accepting these terms, BUYER authorizes SELLER to charge BUYER's credit card automatically when shipment is made of product is made. As BUYER has elected to pay by credit card, the BUYER will be bound to the terms of its agreement with its credit card issuer. If the credit card information provided by BUYER is invalid, or the charge is otherwise declined for any reason, payment terms shall automatically be deemed to be COD.

Card Type: ☐ Visa ☐ MasterCard ☐ American Express	**Credit Card Billing Information:**
Name as Printed on Card:	Name:
Credit Card Number:	Address:
Expiration Date:	City: State:
CID # (3 digits on back or 4 digits on AMEX (front following acct number)	Zip Code:
Name on Otis Account and Account Number:	Tel: Email:

By submitting this form, applicant attests that the information provided in this application is correct to the best of applicant's knowledge, and applicant intends it to be relied upon by Otis Spunkmeyer, Inc. ("seller") in evaluating this application. Applicant also hereby expressly agrees to and accepts all sales agreement Terms and Conditions set forth below, subject to seller's acceptance.

X_____ _____ _____

Authorized Signature Date Title

OTIS SPUNKMEYER, INC. ("SELLER"), whose principal place of business is located at 14490 Catalina Street, San Leandro, CA 94577, and the person or entity that has accepted these conditions ("BUYER"), agree as follows:

1. **Term.** This Agreement shall take effect upon acceptance by SELLER, and shall continue in effect until terminated as provided herein. BUYER's obligation to pay for Products delivered and sold shall not be limited by such termination.
2. **Price and Delivery**. All prices are F.O.B. SELLER's place of business. All deliveries include an original invoice, which shall be signed by BUYER upon receipt. Any freight costs and insurance, to the extent not paid directly by BUYER, shall be separately set forth on the invoice. BUYER acknowledges that all scheduled delivery dates are estimated, and SELLER shall not be liable for any damages as a result of delivery delays for any reason other than arbitrary refusal by SELLER to perform. SELLER retains the right to adjust prices any time on future sales.
3. **Resale Tax Certificate.** Buyer agrees to provide Seller with a copy of BUYER's current resale certificate or license from time to time as SELLER may request. Failure to provide such documentation will result in the inclusion of appropriate tax assessments on purchases.
4. **Equipment Agreement.** SELLER may, from time to time, in its sole discretion, provide certain baking ovens or other equipment ("Equipment") to BUYER to assist BUYER in resale of PRODUCTS. BUYER acknowledges and agrees that any such Equipment provided to BUYER is, and at all times shall remain, the property of SELLER. In the event of termination of this Agreement, BUYER agrees to return the Equipment to Buyer within 15 days after the date of such termination. If the Equipment is not received in good condition (subject to normal wear) within such time period, BUYER shall be liable to SELLER for the replacement value of the Equipment.
5. **Indemnity**. BUYER will defend, indemnify and hold SELLER harmless, at BUYER's expense, from and against any claim or liability that may arise from any improper or unintended use of the Products sold, or Equipment loaned, hereunder. BUYER will defend, at its own expense, any legal action brought against SELLER to the extent that it is based on a claim that any Product manufactured by SELLER per BUYER's specifications or design infringes any patent or copyright, and BUYER will pay all costs and damages awarded against SELLER in any such action or incurred by SELLER through the defense or settlement of such claim.
6. **Entire Agreement; Amendment; No Assignment; Construction**. This Agreement constitutes the entire agreement between SELLER and BUYER relating to the subject matter and supersedes all prior oral and written or contemporaneous oral negotiations, commitments and understandings of the parties. This Agreement may not be changed or amended except by a writing executed by both parties hereto. BUYER may not assign this Agreement without the prior written consent of SELLER. BUYER agrees that this Agreement shall be construed in a neutral manner, neither for or against either party, regardless of the party who drafted it.
7. **Governing Law**. This Agreement shall be governed by and construed and enforced in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within the State of California between California residents, and in no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods. BUYER hereby submits to the jurisdiction of the state and federal courts located in or nearest to Alameda County, California, and agrees that any suit by BUYER shall be commenced in one of such courts.
8. **Attorneys' Fees.** If any legal action is brought relating to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.
9. **Severability**. If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be modified to render it valid and enforceable while to the fullest extent possible preserving the economic effect of the original provision, and the remainder of this Agreement will remain in full force and effect.

Please fax completed and signed forms to (877) 848 – 6733, no coversheet is required.

To input your own credit information into the secured database instead, simply Email MChou@spunkmeyer.com and provide the name on your account with Otis and account number. Maria will give you a password to access the database. Thank you!