



Credit Application

14490 Catalina Street, San Leandro, CA 94577
Please fax to dedicated fax: 877-848-6732

Order Information, general enquiries: 888-275-6847
Credit application and credit card questions: 800-401-6847

Salesperson Name or Number:

'Ship To' Phone Number:

Date Completed:

\$1000 Credit Limit Requested: Yes No

If No, Indicate Credit Limit Requested: \$

Legal Entity & Any Related Entities

Corporation LLC Partnership Sole Proprietor Non-Profit

Federal Tax ID Number: Subsidiary or Division of another company:

Date you began in business: Dun & Bradstreet Number:

Estimated Monthly Otis Purchases? Do other locations have an account with Otis:

Estimated Monthly Sales all products? If so, Otis account number(s)?

Estimated Annual Sales all products: Resale tax certificate?: (Enclose copy if applicable)

Bill To Information / Ownership

HAVE YOU EVER FILED BANKRUPTCY? No Yes BUS PERSONAL Case#: Date/District Filed:

Legal Company Name: Accounts Payable Contact:

Doing Business As: Accounts Payable Email:

Billing Address: Accounts Payable Phone Number:

City: State: Zip Code: Accounts Payable Fax Number:

Ship To Information (If multiple locations, please list all on a separate sheet.)

Shipping Address 1: Contact Name: Email:

Shipping Address 2: Phone Number:

City: State: Zip Code: Email:

Supplier/Trade References (Two are required)

Name: Your Account Number: Contact: Email:

Address: Preferred method to contact this reference:

City: State: Zip Code: Phone: Fax:

Supplier/Trade Reference

Name: Your Account Number: Contact: Email:

Address: Preferred method to contact this reference:

City: State: Zip Code: Phone: Fax:

Supplier/Trade Reference

Name: Your Account Number: Contact: Email:

Address: Preferred method to contact this reference:

City: State: Zip Code: Phone: Fax:

Banking Information (Please attach a voided check or complete the following.)

Bank Name: Officer/Contact:

Address: Fax: Email:

City: State: Zip Code: Account Number:

ABA Routing # (First 9 digits at bottom of check):

Personal Information (If Sole Proprietorship Above)

Name: Home Address:

Title: City: State: Zip Code:

Social Security Number: Home Phone: Email:

Partner Information (If Partnership Above)

Name: Home Address:

Title: City: State: Zip Code:

Social Security Number: Home Phone: Email:

Credit /Sales Agreement

OTIS SPUNKMEYER, INC. ("SELLER"), whose principal place of business is as noted on the Credit Application on the reverse side hereof, and the person or entity which has signed below ("BUYER"), agree as follows:

1. **Term.** This Agreement shall take effect upon BUYER's signature below and acceptance below by SELLER, and shall continue in effect until terminated as provided herein.
2. **Credit Availability.** SELLER reserves the right to change or withdraw credit terms and credit availability at any time without notice to BUYER. All decisions about credit terms and credit availability are at the sole discretion of Seller.
3. **Purchase and Sale.** Subject to the terms and conditions of this Agreement, SELLER agrees, upon BUYER's written purchase order or verbal order, to sell certain food products (collectively, the "Products") and BUYER agrees to purchase such Products from SELLER in the quantities and at the prices agreed to on a Product by Product basis. BUYER acknowledges that the terms and conditions of any purchase order or other business form of BUYER shall not in any way supersede, modify, alter or amend the terms and conditions of this Agreement, and that to the extent there are any inconsistencies between any purchase order or other business form of BUYER and this Agreement, this Agreement shall govern. This Agreement shall not apply if BUYER and SELLER are parties to a separate Sales Agreement.
4. **Price and Delivery.** All prices are F.O.B. SELLER's place of business in San Leandro, CA. All deliveries include an original invoice, which shall be signed by you or your employee to acknowledge receipt of our product. Payment is to be made on invoice, as SELLER does not provide statements. A copy of your pre-printed reference sheet is welcome but not required. Any freight, costs and insurance, to the extent not paid directly by BUYER, shall be separately set forth on the invoice. SELLER shall have the right to adjust prices if market conditions or prices of materials so warrant. BUYER acknowledges that all scheduled delivery dates are estimated, and that SELLER shall not be liable for any damages as a result of delays in delivery for any reason other than arbitrary refusal by SELLER to perform.
5. **Payment Terms.** Payment terms are net thirty (30) days from date of invoice, unless otherwise stated on the initial invoice. No deduction from invoice is permitted, and the full amount of each invoice is fully due and payable in accordance with its terms. All overdue amounts shall bear interest at the rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less, until paid in full. Notwithstanding the foregoing, SELLER reserves the right at any time and for any reason to cease extending credit to BUYER and to ship Products pursuant to this Agreement only on a cash on delivery (C.O.D.) or prepay basis. Payments made outside these terms may delay orders or result in the loss of Credit Availability. Payment of Net 30 day invoices by credit card may be denied and may result in a change of Net 30 day terms to recurring credit card.
6. **Resale Tax Certificate.** BUYER shall attach applicable Resale Tax Certificates to the credit application and send it to SELLER. The Buyer agrees to submit a valid certificate prior to expiration of current certificate at a minimum every three (3) YEARS. Failure to attach such certificates will result in tax charges for which BUYER will be liable.
7. **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.
8. **Termination.** This Agreement may be terminated (a) at any time upon mutual written agreement of the parties; (b) by either party, upon thirty (30) days written notice to the other party; (c) by either party, immediately upon written notice to the other party of a material breach by the other party of any of its obligations under this Agreement and failure to cure such breach within thirty (30) business days (five (5) days for the non-payment of money); or (d) by either party, immediately upon written notice, if such other party is insolvent, or fails to provide adequate assurance of future performance promptly upon reasonable request, or files bankruptcy, or makes any arrangement with its creditors generally, or has a receiver appointed for all or a substantial part of its business or properties, or if such other party goes into liquidation or otherwise ceases to function as a going concern. Upon termination of this Agreement for any reason whatsoever, (a) all amounts then owing to SELLER, whether or not then due, shall accelerate and become immediately due and payable in full and any shipments after termination may be C.O.D. at SELLER's option, (b) any outstanding purchase orders may be cancelled in whole or in part at SELLER's option, and (c) the provisions of this Agreement shall continue to apply to all of Buyer's outstanding purchase orders that have been accepted and are not cancelled by SELLER pursuant to this Section 8.
9. **Notice.** A final demand notice or other communication hereunder shall be in writing and shall be deemed given and effective (i) when delivered personally, by fax (and confirmed by regular mail), or by overnight express, or (ii) three (3) days after the postmark date if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed to a party at its address stated below its signature hereto or to such other address as such party may designate by written notice to the other party in accordance with the provisions of this Section.
10. **Notice.** Requests for copies of invoices or other supporting documents that are more than six (6) months old may be subject to storage retrieval fee. Post-audits must be requested no later than eighteen (18) months from invoice date.

11. Entire Agreement; Amendment; No Assignment; Construction. This Agreement constitutes the entire agreement between SELLER and BUYER the parties hereto relating to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral negotiations, commitments and understandings of the parties. Except as expressly provided herein, 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, as though jointly drafted by both parties.

12. 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 Alameda County, California, and agrees that any suit by BUYER shall be commenced in one of such courts.

13. 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.

14. 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.

15. Confidentiality. SELLER may from time to time require that BUYER provide financial statements or other financial reports to SELLER as a condition of establishing or continuing credit. SELLER agrees that such information will be used only for the purpose of establishing or continuing credit to BUYER, and will be available to internal credit department personnel on an as-needed basis only, or to such other persons or entities as may be required for the purpose of enforcing this Agreement. To the extent that any financial information provided to SELLER by BUYER is publicly known or becomes publicly available through no fault of SELLER, such information shall not be treated as confidential.

Remit payments to: Otis Spunkmeyer, Inc., 7090 Collections Center Drive, Chicago, IL 60693

BY SIGNING BELOW, 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 AGREES TO NOTIFY SELLER IN WRITING WITHIN FIVE (5) DAYS OF ANY CHANGE WHICH RENDERS INFORMATION PROVIDED HEREIN INCORRECT OR MISLEADING. APPLICANT AUTHORIZES SELLER TO REQUEST INFORMATION REGARDING APPLICANT FROM ANY REFERENCES PROVIDED HEREIN, AND APPLICANT AUTHORIZES SUCH REFERENCES TO GIVE ANY REQUESTED INFORMATION TO SELLER. APPLICANT ALSO AUTHORIZES SELLER TO MAKE WHATEVER OTHER INQUIRIES REGARDING APPLICANT OR THE INFORMATION PROVIDED HEREIN THAT SELLER CONSIDERS NECESSARY OR APPROPRIATE TO EVALUATE THIS APPLICATION, AND TO GIVE INFORMATION REGARDING SELLER'S CREDIT EXPERIENCE WITH APPLICANT TO OTHER PERSONS OR ENTITIES, INCLUDING CREDIT REPORTING AGENCIES. APPLICANT UNDERSTANDS AND ACKNOWLEDGES THAT SELLER MAY KEEP THIS APPLICATION WHETHER OR NOT CREDIT IS APPROVED, AND THAT SELLER WILL CONSIDER THE APPLICATION A CONTINUING STATEMENT OF APPLICANT'S FINANCIAL CONDITION. *APPLICANT ALSO HEREBY EXPRESSLY AGREES TO AND ACCEPTS ALL SALES AGREEMENT TERMS AND CONDITIONS SET FORTH ABOVE, SUBJECT TO SELLER'S ACCEPTANCE.*

The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applicant on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance, or because the applicant in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with the law concerning this creditor is Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580. Applicant may request a written explanation of denial of credit within 30 days of receipt of such notice.

<p>X _____ Please spell name here: _____ Title: _____ Date: _____ Signature and Title of Authorized Owner/Partner/Officer</p>	<p>Accepted By: OTIS SPUNKMEYER, INC. X _____ Please spell name here: _____ Title: _____ Date Accepted: _____</p>
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If you are applying for a credit limit greater than \$25,000 please also submit a copy of your latest audited balance sheet, income statement, and statement of cash flows with your credit application or directly in confidence to: Corporate Credit Manager fax 510 357 3516.

http://www.spunkmeyer.com/fbin/OSI_credit_app_051810.pdf