



Menu Planning Software Order Form



Bill To:

Ship To:

Contact Info:

 PHONE

 FAX

 EMAIL

 FOOD SERVICE MGMT CO (if applicable)

Menu Planning

Check box for product selection(s), enter Quantities where applicable:

Base Program *one required*

PRICE

NUTRIKIDS® Menu Planning & Nutritional Analysis..... \$595

Add Optional Modules *for Increased Productivity*

*Production Records \$395

*Recipe & Menu Costing..... \$295

Add Optional Licenses *for Workload Distribution*

One license per computer installation required. Each Full license includes base program & purchased modules

*Full License shared database stand-alone database Qty_____ \$295/Ea

**Production Site Lite - Limited License (shared database) Qty_____ \$145/Ea
(Please contact us at 1.800.724.9853 option 6 before ordering-restrictions apply)

*Menu Planning & Nutritional Analysis Base Program Required

**Menu Planning & Nutritional Analysis Base Program and Production Records Required

Optional Software *for Marketing Menus*

Calendar Artist II \$295

Site Users (stand-alone database) Qty_____ \$95/Ea

Calendar Graphics CD-ROM (Includes 325 add-on graphics!)..... \$50

All products include technical support and updates for 1 year Shipping & Handling \$15

Software cannot be used to treat a medical condition, dietary restriction or allergy.

SIGNATURE REQUIRED *By signing I understand & agree to the terms of the attached Menu Planning & Nutritional Analysis license agreement*



Signature: _____ **Date:** _____

Unless a Tax Exemption Certificate is provided, applicable state sales tax will be charged.

Bill my organization Attn: _____ PO#: _____

Check: Make checks payable to LunchByte Systems, Inc. (Federal ID# 16-1466325)

Charge To: AMEX MC Visa Exp Date: ____/____

Card#: _____

Cardholder Name: _____

Cardholder Address: _____

Remit To

Mail: LunchByte Systems, Inc.
 Dept. #632
 P.O. Box 8000
 Buffalo, NY 14267

Fax: 585.785.2398

This Agreement made by and between LunchByte Systems, Inc. with its principal offices located at 550 Latona Road, Bldg F, Rochester, New York 14626 (LunchByte), and you the "Customer".

1. **LICENSE:** LunchByte grants to the Customer and the Customer accepts upon the terms herein a nontransferable and nonexclusive license to use the Nutrikids Menu Planning and Nutritional Analysis software and selected add-on-modules and optional licenses purchased on the Menu Planning Software Order Form, plus future software updates purchased by Customer ("Program Products") and the Documentation consisting of manuals and installation guides and permitted copies thereof. This license covers any modifications or improvements of the Program Products purchased by Customer.
2. **USE & PROTECTION OF PROGRAM PRODUCTS:** **The Program Products cannot be used to treat a medical condition, dietary restriction or allergy.** The Customer may only use the Program Products at the data processing facility designated as the Customer's shipping address, process only its own data in connection with only one set of data files and use the Program Products in any machine-readable form on any single computer system ("System"). A separate license is required for each System on which the Program Products will be used. If the designated data processing facility or System becomes inoperative due to events beyond the Customer's control, the license granted herein will be temporarily extended to a back-up facility or System until the designated facility or System becomes operational. The Program Products may not be used by or made available to any other person, firm, corporation or other organization, whether or not affiliated with the Customer, the Customer may not assign, sublicense or otherwise transfer this license in whole or in part, and the Program Products may not be used on any other System.
3. **COPIES OF PROGRAM PRODUCTS:** LunchByte has furnished the Program Products to the Customer with one machine-readable copy of the licensed programs and one copy of Documentation. The Customer may copy Program Products in whole or in part for use by the Customer at the designated data processing facility, for archive or emergency restart purposes. All copies of Program Products will be kept at the designated data processing facility, except that one back-up copy may be kept at another location. The Customer will not reproduce more than three (3) copies of any of the Program Products without LunchByte's prior consent. The originals and any copies of the Program Products, whether whole or partial, will be the property of LunchByte. The Customer will reproduce LunchByte's copyright and confidential notices on any whole or partial copies of the Program Products made by the Customer.
4. **CHARGES:** For the use of the Program Products, the Customer will pay LunchByte the licensing use charges specified on LunchByte's invoice. The Customer will remit additional amounts for any taxes including sales tax which LunchByte is required to collect by any taxing authority. Upon the first anniversary of the purchase of the license for the Program Products the Customer may elect to continue to receive technical support and annual software updates by paying the annual fee.
5. **TERM AND TERMINATION:** The license granted hereunder and any extension may be terminated by LunchByte without refund upon written notice to the Customer if the Customer defaults in the payment when due of any amount invoiced or if the Customer otherwise violates the terms of this Agreement. The Customer's obligation to pay charges which are due prior to the termination of this Agreement and any damages arising from the breach thereof by the Customer will survive the termination. Upon termination the Customer will cease using the Program Products or any modification or improvement, thereof and will return all material to LunchByte Systems.
6. **LIMITATION OF LIABILITY:** In providing the Customer with Program Products, LunchByte is not accepting any responsibility for their utilization or for any decisions which may be made in connection therewith. LunchByte DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR USE. However, a defective Program Product diskette returned to LunchByte within 30 days from the date of purchase will be replaced at no charge. THE CUSTOMER AGREES THAT THE LIABILITY OF LUNCHBYTE HEREUNDER FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE TOTAL AMOUNT TO BE PAID BY THE CUSTOMER UNDER THIS LICENSE AGREEMENT, EVEN IF LUNCHBYTE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL LunchByte, ITS DESIGNEES, EMPLOYEES, AGENTS, OR AFFILIATES BE LIABLE FOR ANY PUNITIVE DAMAGES, OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE PROGRAM PRODUCTS.
7. **INDEPENDENT CONTRACTOR:** The Customer and LunchByte acknowledge that LunchByte is an independent contractor and not the Customer's agent for any purpose whatsoever. Neither party will have the authority to enter into any agreement or assume any obligation for the other and nothing herein will be construed to establish any partnership, joint venture or principal-agent relationship between LunchByte and the Customer.
8. **ALLERGEN NOTICE AND DISCLAIMER**
 - A. **Notice:**
 1. The list of allergens in the Allergen Feature is taken from the Food Allergen Labeling and Consumer Protection Act of 2004 ("FALCPA"). The "FALCPA Allergens" are milk, egg, fish (e.g., bass, cod, flounder), Crustacean shellfish (e.g. crab, lobster, shrimp), tree nuts (e.g., almonds, pecans, walnuts), wheat, peanuts and soybeans.
 2. The purpose of the Allergen Feature is to provide Customers with tools they can use to identify FALCPA Allergens in a Customer planned menu or recipe.
 3. LunchByte does NOT identify any allergens.
 - B. **Disclaimer:**

The effectiveness of the Allergen Feature in identifying the presence of FALCPA Allergens in food which the Customer plans to serve is limited by the following:

1. The list of allergens is not inclusive and is limited to the eight (8) FALCPA Allergens.
 2. The Allergen Feature does not identify food sensitivities, intolerances to foods or dietary restrictions followed for medical conditions of anyone served food by the Customer.
 3. Identification of the FALCPA Allergens is dependent on the manufacturer of each product or ingredient in a menu or recipe correctly identifying the attributes of the ingredients in their product or ingredient.
 4. The products or ingredients in a planned menu having been altered by:
 - a. Substitutions
 - b. Alterations
 - c. Change in supplier
 - d. Mislabeling by manufacturer
 - e. Failure of Customer to update their data base
 5. Insufficient information to plan around or accommodate medical conditions or special diets, including but not limited to adverse reactions to any of the FALCPA Allergens or any known or unknown allergen or food sensitivity.
 6. Customer using a recipe from another user of Nutrikids Menu Planning software without identifying all the potential allergens. All allergen identification information in a recipe received from another user of Nutrikids Menu Planning and Nutritional Analysis software is reset to "?" or unknown.
 7. Use of the Allergen Feature by unauthorized employees of the Customer who are not educated or trained to identify the FALCPA Allergens in a recipe and properly enter that information in the Allergen Feature.
 8. The specific allergies or food sensitivities of any one served by the Customer.
 9. The Customer:
 - (i) failing to identify a FALCPA Allergen,
 - (ii) mistakenly identifying a FALCPA Allergen,
 - (iii) improperly entering the data in the Allergen Feature,
 - (iv) failing to review every recipe in the Customer's data base, or
 - (v) incorrectly indicating in the Allergen Feature whether or not any FALCPA Allergens are present in each ingredient in each recipe.
9. **WARNING: THE DATA CONTAINED WITHIN THE PROGRAM PRODUCTS CANNOT BE USED FOR AND DOES NOT PROVIDE MENU PLANNING OR MEDICAL TREATMENT FOR ANYONE WITH A MEDICAL CONDITION, DIETARY RESTRICTION OR FOOD ALLERGY. USE OF THE PROGRAM PRODUCTS TO PROVIDE MENU PLANNING OR MEDICAL TREATMENT FOR ANYONE WITH A MEDICAL CONDITION, DIETARY RESTRICTION OR FOOD ALLERGY IS A VIOLATION OF THE TERMS OF THIS AGREEMENT. ANY CUSTOMER OR USER PLANNING FOR OR TREATING MEDICAL CONDITIONS, DIETARY RESTRICTIONS OR A FOOD ALLERGY MUST CONSULT A MEDICAL PROFESSIONAL FOR ASSISTANCE.**
10. **DISCLAIMER: LunchByte Systems disclaims any responsibility for the accuracy of the independently compiled nutritional databases upon which the Program Products are formulated or the identification of the FALCPA Allergens.**
11. **INDEMNIFICATION: Customer agrees to defend, indemnify and hold harmless LunchByte Systems and their affiliates, and any respective officers, employees, agents and contractors from and against all claims, expenses and damages, including reasonable attorneys' fees, arising out of or resulting, directly or indirectly, from any act or omission by Customer or one served by Customer or from any breach of this Agreement by Customer or one served by Customer.**
12. **MISCELLANEOUS: This Agreement shall be construed in accordance with and governed by the laws of the State of New York without reference to its conflicts of law principles. The parties hereto agree that the exclusive venue and place of trial for the resolution of any disputes arising in connection with the interpretation or enforcement of this Agreement shall be either the United States District Court for the Western District of New York, Rochester, New York or the Monroe County Supreme Court, Rochester, New York. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR COUNTERCLAIM ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND UNDER ANY THEORY OF LAW OR EQUITY. This Agreement shall be binding upon and inure to the respective successors, legal representatives, heirs and assigns of the parties hereto. No rights of third-party beneficiaries exist or are intended to exist under this Agreement. Headings and subheadings herein and in any Exhibits hereto are for convenience of reference only and are not of substantive effect. There are no oral agreements in connection with this Agreement. This Agreement constitutes the entire agreement of the parties hereto, and supersedes any prior agreements or understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended orally or by any course of conduct or usage of trade but only by an agreement in writing duly executed by the parties hereto. Any waiver of a breach of any of the provisions of this Agreement shall not be deemed a waiver of any other provision of this Agreement. If any article, paragraph, section, portion, subsection, subparagraph or subportion of this Agreement shall be determined to be unenforceable or invalid, it shall not affect the remainder of this Agreement, which shall be and remain binding and effective as against all parties hereto. Any notice required under this Agreement will be deemed given when mailed by regular mail postage paid to the appropriate party at the address first set forth above for Lunch Byte, at the address set forth on the Program Products order form or most recent Program Products update and maintenance order form, or to any other address to which a party has specified by notice given to the other party pursuant to this sentence. Both parties may assign this Agreement without the consent of the other. The representations, warranties and obligations of the parties hereto shall survive the termination of this Agreement. If performance of a party under this Agreement is delayed or prevented through no fault of its own by reason of labor disputes, inability to procure materials, failure of utility service, restrictive governmental laws or regulations, adverse weather, acts of God, or other similar cause(s) beyond the control of either party, the performance of such obligation shall be excused for the period of the delay.**