

VENDOR TERMS AND CONDITIONS FOR PURCHASED INVENTORY

These Terms and Conditions are incorporated by reference by and constitute a part of the Purchase Order between Rue Gilt Groupe or its affiliated entities (“**Company**” or “**Buyer**”) and the Vendor named therein (“**Vendor**” or “**Seller**”). The term “**Agreement**” means the Purchase Order, including without limitation these Terms and Conditions. Company may from time to time issue Purchase Orders in written, electronic or facsimile form (each, an “**Order**”) to Vendor for the purchase of certain merchandise and/or services to be resold by Company (the “**Merchandise**” or “**Products**”). Unless otherwise agreed in writing by the parties, all Orders shall be governed by and subject to the Agreement including these Terms and Conditions.

ACCEPTANCE

1. This Order is for the outright purchase of any and all article(s), material(s), work(s), and/or service(s) specified and all property rights therein including all foreign, domestic and industrial and intellectual property rights of any nature whatsoever including personal rights, and the right on the part of the Buyer and its assignees to protect the same by patent, trademark, copyright or otherwise. Acceptance of payment in full will constitute Seller's transfer of all rights. The property rights above extend to all items specially made, prepared, written, designed or adapted for Buyer's use including artwork, drawings, sketches, writings, manuscripts, designs, photographs and machinery. Seller warrants that Seller has full power to grant all such rights herein specified. Rights purchased are specified above and can be limited or conditioned only by express terms (if any) of limitation or condition on the face hereof.
2. It is understood and agreed by the parties that performance of this order must be in accordance with the terms and conditions including delivery set forth herein. This order must be accepted according to the terms and conditions stated herein and the stating of additional or different terms will be deemed to constitute a rejection of this order. Performance of any part of this order shall constitute an acceptance of the terms and conditions stated herein, any contrary terms in Seller's invoice, packaging or other documents notwithstanding. If the terms on this order do not adhere or agree with the invoice as rendered, Buyer may change the invoice to conform to this order, and payment shall be made accordingly. Buyer objects to terms whether contained in Seller's invoice or otherwise, that differ from these conditions. Until the related Merchandise is shipped by Vendor, Company may make changes in written, electronic or facsimile form to any Order, including changes in the specifications, methods of shipment, packing or time or place of delivery. If such changes result in an increase or decrease in cost, or time required for Vendor's performance of the Order, an equitable and reasonable adjustment shall be made in the price, delivery schedule or both. If such changes result in an increase in cost or time, which is unacceptable to Company, then Company at its sole option may cancel its request for such changes. There shall be no changes or modifications to any Order by Vendor unless expressly consented to in writing by Company.
3. The Purchase Order and these terms and conditions constitute the complete agreement between the Seller and Buyer with respect to the subject matter hereof and is an exclusive statement of the terms of said Agreement, which supersedes any and all other oral or written arrangements, representations, or communications by or between Seller and Buyer relating to the subject matter hereof.

4. This Order is given by the Buyer and accepted by the Seller with the understanding that if prior to shipment there is any reduction in the Seller's regular selling price for the merchandise described herein, the price specified will be reduced to the Seller's regular selling price prevailing at the time of shipment. No increase in price shall be effective unless approved in writing by an authorized agent of Buyer.
5. No variation in any terms, conditions, deliveries, quality, quantity and specification of this order will be effective unless in writing and signed by each of the parties hereto.

PERFORMANCE

6. Subject to Section 4, performance of this Agreement must be in accordance with its terms, dating and conditions.
7. Notwithstanding any incoterm or other shipping terminology used and unless agreed otherwise by the parties, all Orders will be designated F.O.B. point of origin, and title and risk of loss shall remain with Vendor until the Merchandise is received by the carrier contracted by Company. If such Merchandise is shipped using a carrier contracted by Vendor, then title shall remain with Vendor until the Merchandise is received by such carrier and the risk of loss shall remain with Vendor until such Merchandise is received by Company or the consumer. Upon Vendor's compliance with Section 8, title to all Merchandise returned to Vendor shall revert to Vendor.
8. Company, at its discretion at any time, may return to Vendor for full credit or replacement, at Company's option and at Vendor's risk and expense, including transportation charges both ways, all or part of any Merchandise or shipment that is below sample or standard, defective or in breach of any warranties, expressed or implied, received late, containing excess quantities or which is in any other manner not in compliance with this Agreement or the related Order. If agreed by Buyer and Seller, or if Seller does not respond to a Buyer return request within forty-five (45) days, Buyer may destroy such goods for credit or dispose of such goods by any other means. The acceptance of any prior similar shipments shall not be considered a waiver of Buyer's right to return all or any part of any subsequent shipment so made. Buyer may impose a service charge of 5% for returns of goods pursuant to this Section. Cure of nonconforming tender may be made only with the consent of Company. Without limiting the foregoing, where a claim is made that the goods infringe or otherwise violate any alleged design, patent, copyright, trade name, trademark, service mark or other intellectual property rights of a third party, Buyer is entitled to receive a refund without returning any merchandise and to cancel this Agreement.

Notice of defects in the Merchandise or of any other breach by Vendor under the terms of the Order will be considered made within a reasonable time, if promptly made after being discovered by Company or after notification is given to Company by its customers or the users of the Merchandise. The return of such Merchandise shall not relieve Vendor from liability for failure to ship conforming Merchandise under the Order or for liability with respect to warranties or conditions, express or implied.

Resale, repackaging or repacking for the purpose of resale shall not be considered as acceptance of the Merchandise so as to bar Company's right to reject such Merchandise or to revoke acceptance.

In addition to any other remedies available to Company under this Agreement or applicable law, upon Vendor's material breach of this Agreement, Company at its option and without

liability to Vendor, may cancel any unshipped portion of any Orders and return prior

COMPLIANCE WITH LAW AND SELLER'S REPRESENTATIONS & WARRANTIES

9. Seller, by accepting this order, represents, warrants and guarantees to the Buyer that the goods furnished hereunder: (a) are: (i) free from defects in materials, workmanship, and fabrication; (ii) of the quality, quantity, size, description, color and dimensions specified by Buyer; (iii) fit for such particular purpose and uses, if any, specified by Buyer or otherwise known to Seller; (iv) in strict accordance with Buyer's specifications, descriptions and approved samples or prototypes; (b) comply with normal retail standards, with respect to colorfastness, wash fastness and light fastness; (c) pass without objection in the trade, are of first quality and conform to the promises or affirmation of fact made by Seller or agents; (d) are delivered to Buyer free from any security interests or other liens or encumbrances of any person and Buyer shall have good and marketable title thereto; (e) do not and will not infringe on any foreign or domestic patent, trade name, copyright or other similar intellectual property interests of any person, arising out of or relating to the advertisement, sale or use of such goods; (f) are genuine, new and unused; (g) are not counterfeit; (h) are well within any expiration date indicated on the packaging of such goods; (i) have been stored under proper conditions to preserve the quality of the goods, and (j) comply with all applicable foreign, domestic, state and local laws and ordinances, including, without limitation, the Textile Fiber Products Identification Act, the Fair Labor Standards Act, the Flammable Fabrics Act, the Wool Products Labeling Act, the Fur Products Labeling Act, the Federal Trade Commission Act, the Federal Food, Drug, and Cosmetics Act, the Consumer Product Safety Act, the Federal Hazardous Materials Transportation Act, the Poison Prevention Packaging Act, the Refrigerator Safety Act, the Radiation Control for Health and Safety Act, the Fair Packaging and Labeling Act, the California Safe Drinking Water and Toxic Enforcement Act of 1986 as in effect from time to time (also known as "Proposition 65")(the "Act"), and all orders, standards, rules and regulations promulgated thereunder.

Without limiting Vendor's indemnity obligations, Vendor will be responsible for paying or reimbursing all costs, fines, penalties and expenses incurred by the Company as a result of Vendor's non-compliance with the Applicable Laws and will reimburse the Company for all costs that it may incur in connection with compliance thereof in relation to sale of the Products. As it relates to the Act (including Section 25600.2), Company does not accept and specifically rejects Vendor's notice to the Company as compliance with the Act. The Company shall not accept any effectuation of compliance with the Act by any means other than by the Vendor's strict compliance by affixing a label to the applicable Product bearing a warning that satisfies Section 25249.6 of the Act.

The representations, warranties and indemnities set forth in these terms and conditions shall survive shipment, inspection, testing, acceptance and payment for or use of the goods delivered hereunder, and are for the benefit of and shall be enforceable by Buyer, its officers, directors, employees, affiliates, subsidiaries, successors, assigns, customers and the users of its products and shall not be exclusive of any other representations and warranties made by Seller or its agents, whether expressed or implied. Statements of Seller made by sales agents or in advertising or promotional materials as to the quality, grade, performance and use of the goods furnished hereunder shall be express warranties of Seller made to Buyer in connection with this order.

Without limiting the foregoing, Seller agrees that at any time Buyer issues a Purchase

Order that contains goods that are hazardous materials, which in accordance with 49 C.F.R. §§171.8 and 173.144, are “Consumer Commodity, ORM-D”, Seller will, prior to its acceptance of such PO, provide written notice to Buyer that such goods are Consumer Commodity, ORM-D. Seller is responsible for determining if such goods are Consumer Commodity, ORM-D. Other than Consumer Commodity, ORM-D, Seller shall not at any time sell or ship to Buyer (or Buyer’s warehouse) any hazardous materials, solid waste, hazardous waste, or restricted waste (including medical waste) as listed in or regulated pursuant to any environmental law (including but not limited to the Hazardous Materials Transportation Act or Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.) or regulation in effect now or in the future. Seller shall identify by SKU or part number every item sent to Buyer that is regulated as “Consumer Commodity, ORM-D.” Seller represents and warrants that it has all applicable information and documentation related to goods that are Consumer Commodity, ORM-D, including but not limited to the Material Safety Data Sheets (“MSDS”). If Buyer requests applicable information and documentation for any such good, then Seller shall have one (1) business day from the date of request to provide Buyer with the following with respect to the good(s) set forth in Buyer’s request: (1) information pertaining to the identity and classification of such good(s) classified as Consumer Commodity, ORM-D; (2) copies of applicable exemptions, exceptions, permits or approvals that apply to materials that would otherwise be classified as Consumer Commodity, ORM-D; and (3) all reasonably available hazard information, including without limitation Material Safety Data Sheets, for the Consumer Commodity, ORM-D. Seller also warrants and represents that (i) any packaging that it uses for the purposes of transporting Consumer Commodity, ORM-D satisfies prescribed specification and testing requirements; and (ii) any such transportation of the goods will be via ground. A shipment term of F.O.B. origin or place of shipment shall not relieve Seller of any obligations to comply with law and/or Seller’s representations and warranties that are set forth within this Section 9.

Vendor, at its sole cost and expense, shall perform, or cause to be performed, all tests on the Merchandise required by the Consumer Product Safety Commission and any other federal, state and local laws, or the laws of any United States Commonwealth or territory where Company does business, including the Commonwealth of Puerto Rico, and shall maintain for a period of not less than three (3) years certificates indicating that all applicable tests have been administered and passed. Such tests shall be conducted by laboratories acceptable to the agency or authority requiring same. Vendor shall make available, and at Company’s reasonable request shall furnish, to Company copies of certificates indicating that applicable tests have been administered and passed and shall permit Company or any person or persons authorized by Company to inspect and make copies of all records maintained by Vendor in connection with such tests.

Upon the reasonable request of Company, Vendor shall obtain and provide to Company any and all registration numbers, license numbers, or the like, required by any federal, state, local, foreign, provincial or territorial governmental agency or authority having jurisdiction over the Merchandise type in question, the sale of such Merchandise, and/or any claims made regarding the Merchandise or any of its qualities.

Notwithstanding anything in this Agreement, each party specifically disclaims any representation or warranty regarding the amount of sales that may occur and any economic or other benefit that it might obtain through its participation in this Agreement. The execution of the Merchandise Vendor Agreement places no obligations on Company to place any Orders or on Vendor to Accept any Orders. Further, the parties acknowledge that Company is not an exclusive dealer of Vendor’s Products and Company is under no obligation to use its best efforts to promote the sale of Vendor’s Products.

10. Buyer has the right to offset any amounts that may be owed to Seller as set forth herein.
11. Seller agrees to indemnify, defend and hold Buyer and its affiliates and their respective officers, directors, employees, agents, customers, all third parties in Buyer and its affiliates stream of commerce (including, without limitation, marketing partners, distributors and business parties), other third parties that may offer services in connection with the Merchandise and those for whom Buyer may act as agent, harmless from any and all claims, actions, liability, loss, damage or expense (including attorney's fees) with respect to any suit, claim, demand or other proceeding arising out of or relating to: (a) the actual or alleged infringement of any foreign or domestic patent, trademark, trade name, copyright, whether issued or pending or other similar intellectual property interest of any person by reason of the advertisement, sale or use of the goods or Vendor Content furnished hereunder, including goods for which Buyer furnished complete specifications; (b) unfair competition; (c) violations or alleged violations of law by Seller; (d) damage or injury to any person by reason of the sale or use of the goods; (e) the failure or alleged failure of the goods to comply with the terms of this order including, without limitation, any express or implied warranties of Seller; (f) defects, whether latent or patent, in material or workmanship; (g) defective design; (h) defective warnings or instructions; (i) Seller's negligence or its acts or omissions; (j) breach of Seller's obligations, representations, warranties or guarantees; or (k) the Vendor Content. Buyer shall have the right to appoint counsel for and defend itself against civil administrative or criminal actions, suits, or proceedings arising out of the foregoing even if any of the allegations thereof are groundless, false or fraudulent. Amounts owing to Buyer by Seller as a result of this Section 11 shall be paid by Seller immediately following written notice from Buyer. Seller shall not settle any claims without the prior written consent of Buyer, which consent shall not be unreasonably withheld.
12. Return of any merchandise by Buyer shall in no way relieve Seller from liability hereunder with respect to warranties, express or implied, or for failure to ship satisfactory merchandise or timely shipment. Complaints, notices of defects or notices of any other breach will be considered timely if made within a reasonable time after notification is given to an executive or authorized agent of Seller of such defects or other breach. Failure of Buyer to state a particular defect upon rejection shall not preclude Buyer from relying on unstated defect to justify rejection or establish breach.
13. Seller, by accepting this order, covenants and agrees that Seller and its employees, agents, independent contractors and suppliers have fully complied with any and all country of origin requirements established by U.S. Customs for all merchandise sold to Buyer by Seller pursuant to this order, and have taken all necessary steps to ensure that no violation of law occurs with regard to goods manufactured and/or supplied pursuant to this purchase order. Seller shall provide Buyer (or its designated representative) with such information pertaining to the manufacturer covered by this purchase order as Buyer may request from time to time in order to verify Seller's compliance with the provisions of this Section 13.
14. If applicable, Seller guarantees and warrants that the merchandise hereby ordered if required to shall comply with the standards of Underwriters Laboratories, Inc., and that said merchandise shall be labeled to bear its stamp of approval.
15. Inclusions herein of express warranties and representations by Seller shall not be deemed a waiver of such other warranties that may be implied in law or fact or provided for by any state or federal law.
16. Seller represents and warrants that the goods are of first quality and not previously sold to a

consumer or:

- a. if the goods are of second quality or defective, (i) Seller shall inform Buyer that the goods are of second quality or are defective, (ii) in any promotional materials Seller provides to Buyer for such goods, Seller shall indicate that such goods are of second quality or defective, and (iii) Seller shall label the packaging of such goods as Buyer may request; and/or,
- b. if the goods were previously sold to a consumer and/or are refurbished and/or factory serviced, (i) Seller shall inform Buyer that such goods were previously sold and/or are refurbished and/or factory serviced, (ii) in any promotional materials Seller provides to Buyer for such goods, Seller shall indicate that such goods were previously sold and/or are refurbished and/or factory serviced, and (iii) Seller shall label the packaging of such goods as Buyer may request.

17. Seller represents and warrants that the goods were manufactured and packaged for sale in the United States or, if not:

- a. Seller represents and warrants that the goods comply with all applicable United States standards, laws and regulations applicable to such goods; and
- b. Seller represents and warrants that such goods including the packaging and collateral materials therefore are not materially different than comparable products sold in connection with the trademarks on such goods or, if not, (i) Seller shall inform Buyer that such goods are materially different than comparable products sold in connection with the trademarks on such goods and how so materially different and (ii) Seller shall take commercially reasonable steps to make up the difference or to provide Buyer with a means of making up the material difference.

18. Seller assumes sole responsibility for (a) any images or information provided to Buyer for use in connection with advertising, marketing, promoting and sale of the goods (collectively, the images and information are referred to as the "Vendor Content"), including, without limitation, descriptive claims, warranties, guarantees, and (b) ensuring that the Vendor Content does not infringe or violate any right of any third party. Seller warrants (i) (a) that any Vendor Content provided to Buyer is produced/made by the Seller, or (b) that Seller has all rights to provide such Vendor Content to Buyer, (ii) Buyer has the unconditional, royalty-free right to use, sublicense and display such Vendor Content in any media worldwide, and (iv) the Vendor Content does not infringe the intellectual property rights of any third person.

19. Seller shall not provide Buyer with information or materials for use in connection with advertising, marketing, selling and promoting the goods which is obscene, threatening, malicious, or which infringes on or violates any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes Buyer to civil or criminal liability.

20. Seller shall comply with all applicable laws, rules and regulations, including any Internet regulations or policies and applicable import and export laws, of the United States in connection with its performance of any purchase order issued by Buyer and accepted by Seller.

21. Without limiting any other provision herein, if any trademark owner asserts that the goods violate or infringe any trademark or trade laws of the United States or other intellectual property rights, Seller shall cooperate with Buyer and provide Buyer with all such information

as may be requested by Buyer.

SHIPMENT

22. In addition to any other rights, Buyer reserves the right to cancel all or part of this order if merchandise is not delivered on the date or dates specified or is shipped after the cancellation date or if merchandise does not comply with the provisions of this order; however, acceptance of partial shipments shall in no case bind the Buyer to accept further deliveries on any order. Merchandise must be received by the date specified; time is of the essence. Seller shall advise Buyer immediately, identifying Purchase Order number and department number, if any part cannot be shipped in time to be received by the date specified.
23. At Buyer's option, in the event of shipment or receipt of less than the items ordered or late shipment of any merchandise, Buyer may accept the shipment and pay for the items received or reject the entire shipment. Such acceptance in no way shall bind Buyer to accept further deliveries on order, nor shall acceptance be construed as a waiver of Buyer's rights to recover damages for late delivery. All rejected or cancelled merchandise shall be returned at Seller's expense. If Seller rejects the return, Buyer has the right to dispose of the merchandise and receive damages. Cure of a non-conforming tender may be made only with the express written consent of Buyer.
24. Buyer shall have the right to impose charge backs on Seller in the event of (i) any variation of the terms, conditions, deliveries, prices, quality, quantity and specifications of this order, (ii) defects, or (iii) differences between what is shipped and what is charged on the invoice.
25. Any or all materials of Buyer in possession or control of Seller shall be and remain the property of Buyer. Seller shall be responsible for any loss or damage occurring while Buyer's materials are in Seller's possession or control.
26. Delivery charges must be full prepaid unless other terms are specified herein.
27. Routing specified must be observed; any change will be at Seller's own expense and risk.
28. No charge will be allowed for boxing, crating, drayage, or storage unless specifically ordered on the face hereof. If additional expense is incurred by Buyer due to improper packaging, addressing, or failure to follow instructions, such additional expenses will be deducted from settlement of the invoice or charged back to the Seller.

BILLING

29. Seller shall prepare a separate invoice for each department/purchase order contained within a shipment. All invoices, bills of lading, packing slips and correspondence must show the purchase order number, case or packing number, weight, shipper's name, routing, date shipped, total number of units per item, unit cost and such other information as reasonably requested by COMPANY. Invoices must be mailed and must not be contained within the shipment. If the order is shipped in segments, all information must appear on each shipment as well as the individual shipment number and total number of shipments to be made. Shipments received without a packing slip will be double checked and it is understood that any difference found upon receipt of invoice will be charged back to Seller. Invoices are to be mailed to: Rue Gilt Groupe, 20 Channel Center, Boston, MA 02210. All invoices shall cover only the

merchandise shipped and show Seller name. Invoices must provide a complete description of merchandise by style, color, size, and unit cost. Invoice line detail must be individually extended, and all line totals must be extended to total invoice amount. Failure to comply with the above billing terms may result in a delay in payment processing.

30. No material in excess of specifications will be accepted as billable material. Overtime work, and the cost thereof, must be authorized by Buyer in advance of performance.
31. Seller warrants that all goods covered hereby are at prices and terms lawful and permissible under the antitrust laws and any other applicable official price control laws, orders and regulations.
32. Seller agrees that prices quoted and shown on the purchase order include any and all applicable federal, state and local taxes.
33. Buyer reserves the right to anticipate payment of invoices rendered on this transaction at the customary legal rate of interest prevailing in the Commonwealth of Massachusetts.
34. Payment terms begin with receipt of goods or invoice date, whichever is later. All goods received on or after the twentieth (20th) of the month will be deemed to be received on the first of the following months. Buyer shall not be liable to Seller for any amount in excess of the actual Purchase Order cost; and no interest or other charge, including but not limited to freight charges, shall be recognized or paid by Buyer upon any such Purchase Order or resulting invoice.
35. Any payment made by Buyer to Seller on account of this Agreement shall be void and unenforceable unless cashed within ninety days of the date of receipt. Claims for payment or damages or pursuant to any of the terms and conditions of this Agreement must be within one year of the date of this Agreement or will be void and unenforceable.
36. Any offsetting claim of Buyer against Seller shall be deducted from the amount of this order at the time of payment or charged against future orders from Seller. Any amounts due Seller from Buyer after offset shall be due and payable under the same terms and conditions as this order.
37. Unless otherwise agreed to in writing by Buyer, all goods not ordered hereunder are to be shipped F.O.B. point of destination to Buyer's address set forth on the face hereof. Buyer shall incur no liability until it has received the goods.

GENERAL

38. Buyer reserves the right to cancel this Agreement and return at Seller's expense all or any part of the merchandise in the event that Seller files a petition under the bankruptcy act, or becomes insolvent, or makes any assignment for the benefit of creditors, or has a receiver appointed for it.
39. Seller shall be excused from liability for failure to deliver and Buyer from failure to accept deliveries hereunder when such a failure is due to an act of God, fire, war, public enemy, strikes, transportation, embargoes, and acts of civil military authority, governmental priority, force majeure, requisition, allocation, order or request, or other like causes beyond its control. Buyer shall have the right to terminate this order immediately upon receipt of notice of

any such event.

40. Seller hereby agrees to allow inspection of facilities and plants by Buyer, and further agrees to provide Buyer information and access to all records of Seller pertaining to this transaction for purposes of an audit of Seller's performance hereunder.
41. Seller shall pay and assume all taxes, fees, stamps, or imports required by law by virtue of the sale of merchandise to Buyer, including payment of all sums on account of unemployment or other social insurance benefits under law.
42. This Agreement and any right or obligation relating to the Merchandise covered by this Agreement hereunder is not assignable able without the written consent of Buyer.
43. **UNDER NO CIRCUMSTANCES WILL BUYER BE LIABLE TO SELLER AS A RESULT OF ANY ORDER OR OTHERWISE FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE SET FORTH IN ANY PURCHASE ORDER. BUYER SHALL NOT BE LIABLE FOR ANY LOST PROFITS, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS ORDER EVEN IF THE BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
44. Product Liability Insurance: Except when otherwise so agreed in writing by the parties, Seller shall obtain and maintain, at Seller's expense, product liability insurance, with such Company or companies as shall be satisfactory to Buyer; with a broad form Vendor's endorsement naming Buyer and its subsidiaries and affiliates and the officers, directors, employees and agents of each of them as additional insured in the amount of \$2,000,000 for bodily injury and property damage combined single limit, and such policies shall provide that coverage hereunder shall not be terminated or changed without at least (30) days prior written notice to the Buyer. Seller shall furnish Buyer with certificates of insurance at time of initial purchase by Buyer, and Seller shall provide Buyer with evidence of all renewals of the above indicated policies and coverages. The purchase of such insurance and furnishing of such certificates shall not be in satisfaction of Seller's obligations hereunder or in any way modify Seller's agreement to indemnify as contained in this Agreement.
45. The order and the rights and obligations of the parties hereto, shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions. The parties agree that any litigation relating directly or indirectly to this Order shall be brought before and determined by a court of competent jurisdiction in Boston, Massachusetts and irrevocably submit to the jurisdiction of such court for the purposes of such proceeding. Seller hereby irrevocably waives all questions of personal jurisdiction and inconvenient or defective venue in connection with any such litigation. Seller and Buyer expressly exclude the application of the United Nations Convention on the Contracts for the International Sale of Goods, if and to the extent applicable.
46. Seller acknowledges that this Agreement and all specifications, descriptions, drawings, blueprints, nomenclature, samples, models, designs, patterns and other information furnished to Seller by Buyer pursuant to this order constitute confidential information and trade secrets of Buyer. Seller agrees that it will not use, copy, reproduce or disclose to any other person any such information, except upon written instructions of the Buyer.
47. The rights set forth in this Agreement are cumulative and in addition to those otherwise provided by law and may be exercised concurrently or separately, and the exercise of any

one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

48. Should Buyer need to resort to legal process to effect collection of any amounts due to it with respect to this Agreement, Seller shall be liable for all costs and attorney's fees incurred by Buyer as a result of said collection.
49. In the event that merchandise is received from Seller on a consignment basis, Buyer is hereby appointed by Seller as its agent of such merchandise for the limited purposes of receiving, storing, selling and shipping the merchandise.
50. Except as set forth in Section 49, each party's relationship to the other party under this Agreement will be that of an independent contractor and neither party shall be considered to be an agent, joint venturer or partner of the other party.
51. Each clause of this Agreement is a distinct and severable clause, and if any clause is deemed illegal, void or unenforceable, the validity, legality or enforceability of any other clause or portion of this Agreement will not be affected thereby.
52. Seller agrees that the Products set forth on the Purchase Order may be offered and sold in connection with a boutique event on the Buyer's website (an "Event") and such Products will be shipped to the Buyer via the Buyer's Quick Ship process (as set forth herein). In connection with the Quick Ship process, (i) Seller agrees to reserve for sale through the Buyer's website(s) the variety and quantity of all Products, and provide accurate inventory information to the Buyer; and (ii) upon completion of the Event, Buyer will submit the final Purchase Order reflecting the actual Products sold during the Event and, subject to the terms of this Agreement, for which Buyer will purchase from the Seller and Seller shall ship such Products to Buyer within 2 business days of its receipt of the final Purchase Order in accordance with the terms of the Buyer's routing guide, as provided to Seller or as otherwise directed by Buyer.
53. Under no circumstances (unless required by law) may Seller make any press release or public announcement related to Company, this Agreement or the relationship between the parties without Company's prior written consent.
54. During the term of this Agreement, and for one year from the expiration or earlier termination of the term, Seller shall not, without Buyer's express written consent, directly or indirectly, solicit or attempt to solicit any employee, independent contractor or consultant of Buyer to terminate his, her or its relationship with Buyer in order to become an employee, consultant or independent contractor to or for any other person or entity.
55. In the event that the Consumer Product Safety Commission or other federal, state or local agency (the "Commission") issues an order pursuant to any consumer protection law (hereinafter referred to as the "Act") requiring either Buyer or Seller to recall, replace, repair or make refunds with respect to all or part of any merchandise (a "Recall") or where Seller determines that a Recall is warranted prior to or without regard to any proceeding or determination by the Commission, Seller shall do so at its expense and assume all costs (including without limitation, reimbursements to Buyer for its out-of-pocket expenses) and such Recall shall be effectuated in a manner determined by Seller with Buyer's consent (which shall not be unreasonably withheld). For purposes of this Section, out-of-pocket expenses shall include any expense incurred by Buyer relating to the Recall. In any event, Seller shall accept return of all of Buyer's inventory involved in a Recall and Seller shall refund to Buyer all monies paid for said inventory. In no event shall Seller treat Buyer less favorably than

any other customer in the event of a Recall or potential Recall. Nothing contained in this Section shall prevent Buyer from taking any actions as may be required of it under the Act and Seller shall pay Buyer all costs and expenses incurred by Buyer in so doing.

56. a) Neither party shall disclose any Confidential Information to any person or entity except employees of such party and the applicable carrier for delivery purposes as required in the performance of their employment-related duties in connection with this Agreement, nor will either party use or permit any other person or entity to use the Confidential Information for any purpose other than those purposes expressly contemplated herein. Each party shall inform those persons or entities having access or exposure to Confidential Information hereunder, of its obligations under this Section. Each party may disclose Confidential Information that is lawfully required to be disclosed by it to any governmental agency or is otherwise required to be disclosed by law, provided that, before making such disclosure, and shall give the other party adequate opportunity to interpose an objection or take action to assure confidential handling of such information.

(b) "Confidential Information" means this Agreement and any other agreement between Company and Vendor, all information in whatever form transmitted relating to the past, present or future business affairs, including without limitation, the sale of merchandise and/or services, actual and prospective purchaser lists and other purchaser information, and research, development, operations, security, broadcasting, merchandising, marketing, distribution, financial, programming and data processing information of either party or another party whose information such party has in its possession under obligations of confidentiality, which is disclosed by the other party, its subsidiaries, affiliates, employees, agents, officers or directors to such party or which is produced or developed during the working relationship between the parties.

(c) Vendor shall not use any information obtained from Company's customers (e.g., through warranty cards or otherwise) to offer for sale to such customers any goods or services. Vendor shall not, without first obtaining Company's written consent, include with any merchandise any information that promotes, or would enable Company's customers to acquire, either directly or indirectly, any additional merchandise from persons other than Company.

(d) Each party agrees that the Confidential Information referred to in this Section is valuable and unique and that disclosure or use thereof in breach of this Section will result in immediate irreparable injury to the other party. In the event of a breach or threatened breach of this Section, the damaged party shall be entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief, including, but not limited to, temporary restraining orders, which remedy shall be cumulative and in addition to any other rights and remedies to which it may be entitled.

57. Notwithstanding any legal presumption to the contrary, the covenants, conditions, representations, indemnities, and warranties contained in this Agreement, including, but not limited to the sections under "Performance"; "Compliance with Law and Seller's Representations & Warranties" and "General", hereof, shall survive inspection, delivery, acceptance, payment and termination of this Agreement, shall be binding upon Vendor and its successors and permitted assigns, and shall run in favor of Company and its successors and assigns.

58. All costs and expenses, including but not limited to, attorneys' fees, incurred by Company due to Vendor's violations of or failure to follow any or all of the terms of the Order will be charged to Vendor, and Vendor expressly agrees to reimburse Company for all such costs and expenses.

59. In the event that either a voluntary or involuntary bankruptcy petition is commenced by or against Vendor or any of the Related Entities under Title 11 of the United States Code (“**Bankruptcy Code**”), or under any other federal or state law governing the reorganization, liquidation, assignment for the benefit of creditors, or other similar disposition of Vendor or the Related Entities, Vendor and the Related Entities unconditionally and irrevocably agree that Company shall be entitled, and Vendor and the Related Entities hereby unconditionally and irrevocably consent, to relief from the automatic stay under Section 362 of the Bankruptcy Code or any other bar to Company’s exercising its rights under this Agreement so as to allow Company to exercise its rights and remedies under this Agreement, including but not limited to exercising its right of setoff as set forth herein. In such event, Vendor and the Related Entities hereby agree that they shall not, in any manner, oppose or otherwise delay any motion filed by Company for relief from the automatic stay or other bar. The provisions of this Section constitute a material inducement for Vendor and Company to enter into this Agreement.

Effective Date August 30, 2018

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