

TERMS AND CONDITIONS OF PURCHASE

1. **GOVERNING PROVISION.** The purchase of all goods or services by the purchaser (the “Company”) shall be subject to and governed exclusively by these terms and conditions of purchase (the “Conditions”). The seller’s acceptance of any order or other offer from the Company for goods or services shall be expressly conditioned upon the seller’s assent to these Conditions, which assent shall be deemed given by the seller upon the manufacture or shipment of the goods or the performance of the services that are described on a purchase order containing or submitted with these Conditions (a “Purchase Order”). No modified, additional or different conditions or terms (except for express warranties which are broader in scope than those contained in these Conditions and for additional remedies given to the Company), whether contained in a seller quotation, order acknowledgement, invoice or other document furnished by the seller, shall be recognized by or binding upon the Company unless specifically agreed to in writing by an executive officer of the Company, and the failure of the Company to object to any such provisions or terms shall not be a waiver of these Conditions or an acceptance of such additional or different terms or conditions. By manufacturing or delivering such goods or performing such services, the seller waives any and all terms and conditions of its quotation, order acknowledgment, invoice or other documents.

2. **PAYMENT TERMS.** Payment discount periods shall not commence until the later of: (a) the date the goods are received by the Company or by the person to whom the goods are to be shipped; (b) the date the services are provided by the seller; or (c) the date the invoice for goods or services is received by the Company. No interest, service or default charges will accrue on any invoices.

3. **PRICE CHANGES.** The Company shall not be billed at prices higher than stated on a Purchase Order unless agreed to in writing by an officer of the Company. The seller represents that the prices charged for goods or services described on a Purchase Order are the lowest prices charged by the seller to buyers at a class similar to the Company under conditions similar to those specified on such Purchase Order and that the prices comply with applicable governmental regulations in effect at the time of the related quotation, sale, delivery and invoice. The seller agrees that any price reduction made in goods or services covered by a Purchase Order subsequent to it being placed by the Company will be applicable to such Purchase Order.

4. **DELIVERY.** Time is of the essence; delivery is to be made both in quantities and at times specified in schedules furnished by the Company or agreed to by the Company and at the places specified in a Purchase Order and shall not be excused by the seller’s inability to obtain materials, supplies or labor from its usual sources, by reason of any governmental interference, by lack of the usual means of transportation, by any casualty to the goods prior to the passage of the risk of loss to the Company, or otherwise by reason of force majeure or act of God. If delivery of goods or rendering of services is not completed by the time promised, the Company reserves the right without liability, in addition to its other rights and remedies, to terminate a Purchase Order by notice effective when received by the seller, as to those goods not yet shipped or services not yet rendered. Any provisions herein for delivery of goods or rendering of services by installments shall not be construed as making the obligations of the seller severable.

5. RISK OF LOSS; RIGHT TO INSPECT; NOTICE OF REJECTION. It is agreed that the term "F.O.B." is a price term only. All risk of loss or damage in transit shall not pass to the Company until delivery of goods to the Company or to the person to whom goods are to be shipped.

All goods purchased by the Company are subject to inspection and approval at the point of destination either by the Company or the person to whom they are to be shipped. The Company and the person to whom the goods are to be shipped reserve the right to reject any goods which do not conform to the Company's instructions, specifications, drawings, or the warranties contained herein or given by the seller. Notice of rejection of goods may be given either orally or in writing by the Company and shall be given within a reasonable time after the discovery of the non-conformity or breach. The failure of the Company to specify in the notice of rejection any particular defect or non-conformity shall not preclude it from relying on such defect or non-conformity to justify rejection or establish a breach. Payment by the Company for any goods purchased shall not constitute an acceptance and shall be deemed to be made with reservation of rights.

Rejected goods will be held pending the seller's instructions and at the seller's risk. No goods returned as defective or non-conforming shall be replaced without a new Purchase Order. Neither the Company nor the person to whom the goods are shipped shall have any obligation to sell any goods so rejected.

6. CANCELLATION. The Company reserves the right to cancel all or any part of a Purchase Order without payment of penalty and without prejudice to any claim for damages or any other rights of the Company at the time of such cancellation if the seller becomes bankrupt or insolvent, if a petition in bankruptcy is filed against the seller, if a receiver is appointed for the seller, if the seller makes an assignment for the benefit of its creditors, if the seller breaches any of these Conditions, or if the Company's business purpose is substantially frustrated.

7. CHANGE IN QUANTITY. In the event that the Company shall find that it does not require the full amount of the goods specified in a Purchase Order, it shall have the right to reduce the amount ordered as to any goods which are not specially manufactured under such Purchase Order prior to their delivery to a carrier for shipment, and, as to any goods which are to be specially manufactured under a Purchase Order, prior to their being placed in production. The Company shall reimburse the seller for any expenses (excluding overhead) actually incurred with respect to the quantity so reduced.

8. WARRANTIES. The seller warrants that all goods listed on a Purchase Order and any substituted or additional goods purchased whether by an oral or written order are free from the rightful claim of any person by way of patent, trademark, or copyright infringement or the like, are merchantable within the meaning of Section 2-314 of the Uniform Commercial Code, are fit for the purpose intended, are of good materials and workmanship and free from defects, and conform to the specifications, drawings, samples or other descriptions furnished by the seller or specified by the Company, its customers and users of such goods. The seller agrees that these warranties shall survive any inspection, delivery, acceptance or payment by the Company or by the person to whom the goods are shipped. These warranties shall be in addition to any implied

warranties made by the seller under the Uniform Commercial Code or any express warranties of additional scope given by the seller. Any express warranties of additional scope given by the manufacturer of goods purchased by the Company shall extend to and inure to the benefit of the ultimate purchaser or user of any such goods purchased for resale. Any conflict between any express or implied warranty shall be resolved in favor of the warranty providing the broadest scope.

9. INDEMNIFICATION. The seller agrees to indemnify the Company, its customers and users of goods against, and hold the Company, its customers and users of goods harmless from, any and all claims, actions, suits, proceedings, cost, losses (both commercial and non-commercial), expenses, damages, and liabilities, including attorneys' and experts' fees, with respect to any goods which the seller sells to the Company arising: (a) from or connected with injury to person, property, or business based upon or resulting from the actual or alleged use, operation, delivery, transportation, manufacture, or selection of the goods listed on a Purchase Order or any substituted or additional goods purchased whether by an oral or written order and caused by any defect whatsoever; (b) out of or related to any strict liability in tort; or (c) out of or related to claims for breach of any express or implied warranty, including without limitation any implied warranty of merchantability or warranty of fitness for a particular purpose. The seller further agrees, at its own cost and expense, and upon the Company's request, to defend or assist in the defense of any and all suits which may be brought against the Company, either alone or in conjunction with others, upon any of the aforesaid liabilities or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against the Company in any such actions or suits, provided, however, that the Company shall give the seller written notice of any such suit or action, and provided further that the seller shall not consent to the entry of any judgment or enter into any settlement or compromise with respect to any suit, claim or demand without the Company's prior written consent.

The seller further agrees to indemnify and hold the Company, its customers and users of goods harmless from any and all claims, actions, suits, costs, damages, fines, expenses, including attorneys' and experts' fees, arising out of or resulting from any infringement of any U.S. or foreign patent, trademark or copyright by reason of the use or sale of any goods listed on a Purchase Order or any substituted or additional goods purchased whether by written or oral order (except for any infringement resulting directly from adherence to specifications or drawings, other than those of the seller's design or selection, originally submitted to the seller by the Company) and the seller covenants that it will, at its own cost and expense, and upon the Company's request, defend or assist in the defense of any suit or action which may be brought against the Company or those using or selling said goods by reason of any alleged infringement of any patent, trademark, or copyright in the sale or use of said goods and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against the Company or those using or selling said goods in any such actions or suits, provided, however, that Company shall give seller written notice of any such suit or action, and provided further that the seller shall not consent to the entry of any judgment or enter into any settlement or compromise with respect to any suit, claim or demand without the Company's prior written consent.

The seller shall name the Company as an additional insured on a primary and non-contributory basis with waiver of subrogation (where allowable by law) under the following

policies: commercial general liability, including products liability and/or completed operations, as applicable; commercial auto liability; commercial umbrella; and workers compensation.

10. REMEDIES. The remedies herein reserved to the Company shall be cumulative and additional to any other or further remedies provided by law or contained in any quotation, order acknowledgement, invoice or other document furnished by the seller. No writing, course of dealing or usage of trade, including, without limitation, anything which purports to limit any express or implied warranties or limit any damages against the seller or which purports to make any remedy by the Company an exclusive remedy, shall limit any remedy available to the Company. All such purported limitations are null and void.

No waiver of any breach of any provision of these Conditions shall constitute a waiver of any other breach of such or any other provision or term. The seller shall be liable for all damages, losses or expenses, direct and indirect, resulting from the breach of any of these Conditions.

11. COMPLIANCE WITH LAWS. In accepting a Purchase Order, the seller represents that it has and will continue, during the performance of the agreement created by such acceptance, to comply with all federal, state and local laws, regulations and executive orders from which liability may accrue to the Company for any violation thereof. By acceptance hereof, the seller certifies compliance with all such laws, regulations and executive orders.

Without limiting any other provision of these Conditions, to comply with toxics in packaging laws adopted in various jurisdictions in which goods purchased by the Company may be sold, distributed or used, upon the Company's request, the seller shall provide the Company a written certificate of compliance in form and substance that is satisfactory under any such law certifying to the Company that, among other things: (1) lead, mercury, cadmium, and hexavalent chromium were not intentionally added to any goods or components of goods during the manufacturing process; (2) the sum of the incidental concentration levels of lead, mercury, cadmium and hexavalent chromium present in any goods or components of goods does not exceed 100 parts per million by weight; and (3) the seller will maintain adequate documentation of this certification for inspection upon the Company's request. In the event that goods and/or components of goods are exempt from applicable toxics in packaging laws, upon the Company's request, the seller shall provide the Company a written certificate of compliance in form and substance that is satisfactory under any such law certifying to the Company that, among other things, such goods and/or components of goods are exempt from such laws for the reasons enumerated by the seller.

12. INTERPRETATION; PAROL EVIDENCE. Except as otherwise agreed in writing by the parties, these Conditions are intended by the parties as a final expression of their agreement and are intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in these Conditions. Acceptance or acquiescence in a course of performance rendered in accordance with a Purchase Order or under these Conditions shall not be relevant to determine the meaning of these Conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objections. If any provision of these Conditions shall be unenforceable, then such provision shall

be null and void but the remainder of the Conditions shall remain in full force and effect. The paragraph headings herein are for convenience only and shall not be deemed to limit or otherwise modify the terms hereof. This document shall be construed and interpreted without regard to any presumption against the party who drafted the document.

13. ASSIGNMENT. No Purchase Order or any obligation of the seller to the Company thereunder or under these Conditions may be assigned by the seller without obtaining the Company's prior written consent in each instance, which consent may be withheld in the Company's sole discretion. The Company may assign its rights and obligations under a Purchase Order and hereunder in whole or in part on one or more occasions without obtaining the consent of or giving notice to the seller.

14. APPLICABLE LAW. These Conditions shall be interpreted, and the rights and obligations of the parties hereto shall be governed and determined, by the Uniform Commercial Code and the other internal laws of the State of Missouri. Wherever the term "Uniform Commercial Code" is used herein, it shall be construed, with respect to a particular Purchase Order, as meaning the Uniform Commercial Code as adopted in the State of Missouri as effective and in force on the date of a sale of goods or services by the seller to the Company under such Purchase Order. Whenever a term defined by the Uniform Commercial Code is used in these Conditions, the definition contained in the Uniform Commercial Code shall determine its meaning as used herein.

15. CONFIDENTIALITY. In connection with the offer to purchase and the purchase of goods or services from the seller, the Company may disclose to the seller confidential business information of the Company or its customers, including, but not limited to, the identity of the Company's customers, prices, packaging designs and proposed packaging designs. The seller agrees to maintain the confidentiality of this information and not to disclose it to third parties and not to use this information for any purpose unrelated to the sale of goods and services by the seller to the Company pursuant to these Conditions.

16. ARBITRATION; JURISDICTION; VENUE. ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING FROM THE OFFER TO PURCHASE AND THE PURCHASE OF GOODS OR SERVICES BY THE COMPANY FROM THE SELLER SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, PROVIDED THAT, WHERE LESS THAN \$250,000.00 IS AT ISSUE IN ANY SUCH DISPUTE, CONTROVERSY, OR CLAIM, THE ARBITRATION SHALL BE CONDUCTED BY ONE (1) ARBITRATOR. ALL SUCH ARBITRATION PROCEEDINGS SHALL TAKE PLACE IN ST. LOUIS COUNTY, MISSOURI. IN THE EVENT THERE IS ANY LITIGATION RELATING TO THIS PARAGRAPH REQUIRING ARBITRATION OR ANY OTHER MATTER THAT IS FOUND NOT TO BE SUBJECT TO ARBITRATION, THEN THE PARTIES IRREVOCABLY AGREE THAT JURISDICTION AND VENUE IN ANY SUCH LAWSUIT SHALL PROPERLY (BUT NOT EXCLUSIVELY) LIE IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY, MISSOURI, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI AND THE PARTIES IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT AND

HEREBY WAIVE ANY OBJECTION THAT SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

17. ATTORNEYS' FEES. IN CONNECTION WITH ANY ARBITRATION OR LITIGATION ARISING FROM THE OFFER TO PURCHASE OR THE PURCHASE OF GOODS OR SERVICES BY THE COMPANY FROM THE SELLER, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND EXPENSES FROM THE NON-PREVAILING PARTY AS PART OF THE SAME ARBITRATION OR LITIGATION; PROVIDED, HOWEVER, IF A PARTY PREVAILS ON SOME, BUT NOT ALL, OF ITS CLAIMS, SUCH PARTY SHALL BE ENTITLED TO RECOVER AN EQUITABLE AMOUNT OF SUCH FEES, COSTS AND EXPENSES, AS DETERMINED BY THE APPLICABLE ARBITRATOR OR COURT COMMENSURATE WITH ITS DEGREE OF SUCCESS AGAINST THE NON-PREVAILING PARTY.

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