



## **PURCHASE ORDER TERMS AND CONDITIONS**

### **PURCHASE ORDERS**

Our commitment to purchase merchandise shall arise only at such time as AM Retail Group, Inc. (AMRG) issues a Purchase Order for specified quantities of merchandise and AMRG's obligation to purchase merchandise shall be limited to the quantities contained in the purchase order issued. All shipments against a valid purchase order shall be considered acceptance of The Terms and Conditions contained herein shall be effective for all merchandise, goods and services ("Merchandise") sold by you to AM Retail Group Inc. and/or its affiliated entities ("AM Retail Group"). These Terms and Conditions, the business terms contained in any AM Retail Group purchase order and the Vendor Guidelines, each as amended from time to time (copies of which you acknowledge you have received) constitute the entire agreement between us and are collectively referred to herein as the "Purchase Order" and/or "Agreement". These Terms and Conditions and the Vendor Guidelines may be found on the Internet at <http://www.amretailgroup.com/vendor.html>. Any AMRG purchase order expressly limits acceptance to the Terms and Conditions stated herein, which may not be varied by any course of dealing, course of performance, any oral communication between the parties or any other means, except by a writing referencing the purchase order number and signed by an AMRG duly authorized representative. These Terms and Conditions supersede the terms and conditions of any offer, proposal or document of Vendor's, and this Agreement will govern all transactions between the Vendor and AMRG, including all future transactions, unless specifically modified in writing and signed by both parties. Any estimate or forecasts of AMRG's future needs for merchandise, which may be provided to you by us, are for long range planning purposes only and shall in no way represent a commitment from AMRG. AMRG has no responsibility for any actions taken by you based on such estimates or forecasts.

### **SHIPMENT**

Time is of the essence. All merchandise must be delivered to the designated carrier as selected by us, on or before the "Ship Date" specified in our Purchase Order for Merchandise or services, but not more than ten (10) days prior to the "Ship Date" specified. Merchandise shipped prior to the date specified will, at our option, be refused. We may regard our Purchase Order as having lapsed, and therefore null and void, if Merchandise is delivered to our designated carrier after the "Ship Date".

### **OFFER & ACCEPTANCE:**

Our Purchase Order is not valid unless: (i) it is computer generated from AMRG's freight forwarder; or (ii) it is a faxed copy of a system-generated "on order" status purchase order. Shipment to us of any part of the Purchase Order shall constitute your acceptance of the Purchase Order for all Merchandise ordered herein and acceptance of all terms, conditions and instructions contained in these Purchase Order Terms and Conditions and in our Vendor Guidelines. Any deviation by you from our Purchase Order or demand by you for additional or different terms and conditions, or any statement made by you in an invoice or otherwise attempting to make your acceptance conditional on our consent to additional or different terms and conditions shall be of no effect, and are hereby objected to and rejected.

### **PRICE AND SHIPPING:**

The price specified in our Purchase Order shall include all costs of packing of Merchandise and all costs of delivery of Merchandise to the "F.O.B. point" or other delivery point specified in the applicable Purchase Order, including (a) all duties and taxes (including excise and withholding



taxes) payable in any country where production or delivery takes place; (b) any commissions to selling agents; and (c) other incidental charges, whether or not such charges are itemized separately on invoices to us. You shall ship only the quantities of Merchandise ordered by us in the applicable Purchase Order. You shall not make any substitutions without our prior written approval. You shall bill us for the Merchandise at the price specified in the applicable Purchase Order.

**PAYMENT TERMS:**

Payment terms are printed on each Purchase Order (see Notes section), as negotiated by the buying team.

**INVOICING:**

Invoice and receipt of goods at AM Retail Group distribution center are required for payment. Vendor must send invoice document (including remittance instructions as well as AM Retail Group PO number, style number/description, quantity, cost per unit and total cost) to the following address or email:

AM Retail Group, Inc.  
Attn: Accounts Payable  
7401 Boone Ave North  
Brooklyn Park, MN 55428  
AMRG-AP@amretailgroup.com

**TERMS AND CONDITIONS ACKNOWLEDGEMENT:**

You acknowledge that we have provided you with a copy of AM Retail Purchase Order Terms and Conditions and that our buying agents and employees are required to follow these Terms and Conditions. You shall comply with and support the Terms and Conditions and shall not take any action that will violate the Terms and Conditions. You shall report to us any violations or attempted violations of the Terms and Conditions and certify your compliance if requested to do so by us.

**NO VERBAL CHANGES:**

Our Purchase Order, including these Terms and Conditions, may not be changed or terminated verbally. All changes to Purchase Order terms and conditions must be agreed to in writing by both parties and/or evidenced by a revised or reissued purchase order.

**ASSIGNMENT:**

You agree not to assign any rights or delegate any duties hereunder, except the right to receive payment for conforming Merchandise. Any other assignment or delegation, whether by operation of law or otherwise, is void and not binding on us without our prior written consent. No assignment or delegation (including assignment of the right to receive payment), with or without notice, shall bar us from asserting against you or the transferee or both any claim against you whether or not arising out of our Purchase Order and whether or not accrued at the time of assignment or delegation. Any adjustments made with you or returns made to you for credit shall be binding upon you and any assignee or delegate. If you make any assignment or delegation in violation of the foregoing, in addition to our other rights and remedies, we may cancel the undelivered balance of our Purchase Order without liability to us except for Merchandise previously accepted.

**CANCELLATION:**

We may cancel our Purchase Order in whole or in part in the event of any of the following, each of which it is agreed will substantially impair the value of the whole Purchase Order to us: (a)



there is any breach of your warranties hereunder; (b) there is any delay in delivery or performance or departure from delivery and routing instructions; (c) there is any variation from the quantities, assortment, prices, services or other terms and conditions specified in the Purchase Order; (d) there is any breach of your obligations hereunder or your obligations as set forth in the Vendor Guidelines; (e) the Merchandise or services become the subject of any claim by any third party; (f) you become insolvent or make an assignment for the benefit of creditors, or a receiver for your assets or business is appointed; or (g) in the event of a fire, flood, earthquake, tempest, lock-out, strike, war, act of God, civil commotion, or other cause beyond our reasonable control. In such event, you shall immediately stop all work and observe any instruction from us as to work in process. Cancellation for any of the foregoing reasons shall constitute "for cause" and shall not subject us to any liability, cost, or charge whatsoever. We may also cancel this Purchase Order in whole or in part without cause at any time prior to our acceptance of the Merchandise. In the event of such cancellation, our liability to you shall be limited to the contract price of that portion of this Purchase Order fully and properly performed and received by us prior to such cancellation, plus the documented, actual out of pocket costs you reasonably incurred in contemplation of performance of the canceled portion, less any amount saved as a result of such cancellation and less any amounts which could have reasonably been mitigated by you.

#### **TRADE NAME AND TRADEMARKS:**

AM Retail Group and its affiliated entities are the owners and/or licensors of certain intangible assets including the trademark, trade name, service mark and logo for "AM Retail Group" , "Bass" and "Wilsons Leather Outlet" as well as various trademarks relating to merchandise ("AMRG Identification"). These intangible assets are owned and/or licensed by us and other affiliated entities and AM Retail is obligated to ensure correct usage and protection of such intangible assets. You agree not to use, disclose or otherwise exploit the AM Retail Group AMRG Identification, directly or indirectly, for any purposes whatsoever without, in each instance, obtaining the prior written consent of AM Retail Group executed by an authorized AM Retail Group signatory. If we direct you to mark or label any Merchandise with AMRG Identification, such marking or labeling shall be limited to the indicated quantities of such Merchandise and shall be done in accordance with our specific instructions. You shall not sell or otherwise dispose of, nor permit the sale or disposal of, any Merchandise bearing any AM Retail Group or AMRG Identification (including any rejected Merchandise or nonconforming Merchandise) to anyone other than us without first obtaining our express written consent and then only after first removing all our identification prior to such sale or disposal. You shall bear all costs and expenses relating to such removal. You shall not dispose of any Merchandise anywhere in the United States that is not purchased by us if such Merchandise contains AM Retail Group or AMRG Identification that cannot be removed without damaging or destroying the Merchandise. We may elect, but shall have no obligation, to purchase from you any surplus labels, packaging or other materials bearing AM Retail Group or AMRG Identification. All such materials not purchased from you by us shall be destroyed at the cancellation or termination of the Purchase Order. You shall have no interest or rights in any AM Retail Group or AMRG Identification except as expressly granted in our Purchase Order. The provisions of this Section shall survive the cancellation or termination of any Purchase Order. You acknowledge that your violation of any provision set forth herein constitutes a breach of this Purchase Order that will cause immediate and irreparable harm and that we will be entitled to entry of (among other things) immediate preliminary, temporary and/or permanent injunctive relief against you. Merchandise (irrespective of whether it is defective or nonconforming) that bears our trademarks, trade names, artwork or graphic designs may not be disposed of by you within the United States without our prior written consent.

#### **ARTWORK/GRAPHIC DESIGN AND PATENTS**

You agree all services, deliverables, products, artwork, graphics, designs and mechanical features created, adapted, produced or designed by you for AM Retail Group in the course of



selling Merchandise to us or performing services for us or provided by us to you (collectively, "Work Product"), together with any copyrights or patents or all other intellectual property or proprietary rights in such artwork, graphics, designs or mechanical features are "works made for hire" in accordance with the U.S. Copyright Act and are our exclusive property. You shall not disclose works made for hire to anyone other than your employees or us. Such works made for hire shall be used only on Merchandise manufactured for or sold to us, except as otherwise provided herein. If, and to the extent, such Work Product is not work made for hire, you hereby irrevocably assign to us the exclusive, worldwide, perpetual ownership of such artwork, graphics, designs and mechanical features, and all rights of copyright, trademark, trade dress and patent in such artwork, graphics, designs or mechanical features and we shall have the right to obtain and hold in our name rights of copyright, copyright registration, trademarks and patents and similar protections which may be available in the artwork, graphics, designs and mechanical features. You shall not claim or seek protection, which may be available for intellectual property contained in or incorporated into the Merchandise. You shall cooperate with us and provide to us all assistance reasonably required for us to protect such rights.

### **MERCHANTABILITY:**

You warrant and represent that all Merchandise delivered pursuant to our Purchase Order will, (including all of its related packaging, labeling and printed materials, in addition to any express warranties or guarantees heretofore or hereafter made by you), (i) conform to the description and specifications thereof contained in the purchase order, in any specifications and sample requests, and the pre-production Merchandise samples, (ii) be free from any defects in design, construction, material, packaging or workmanship, (iii) be merchantable at the time of delivery to us and at time of use by our customers, (iv) be fit and safe for sale and any use by us or our customers for which such items are originally intended and any particular intended use of or for which you or your agents have knowledge and (v) be in compliance with the Vendor Guidelines and all requirements set forth therein. You shall defend, indemnify and hold us harmless from and against all liability, claims, loss, suits, allegations, damages, and expenses, including attorneys' fees, on account of any defects in the Merchandise or on account of any breach of this warranty and the terms hereof including, but not limited to, compliance with all relevant laws and regulations. In addition, at your sole cost and expense, you shall defend, indemnify and hold us harmless from any and all liability, claims, allegations, suits, damages, losses, penalties and expenses, including costs and attorneys' fees, arising out of, or in any manner based upon the performance or nonperformance of this Purchase Order, or arising or occurring in connection with the Purchase, use or sale of the Merchandise, or advertising of the Merchandise. Without limiting the foregoing, you agree to maintain general liability and product liability insurance providing broad form vendor's coverage in each case to afford protection to the limits of not less than that customarily maintained by comparable vendors and suppliers, and naming us as an additional insured to cover your indemnification obligations described herein. At our request, you will provide us with a Certificate of Insurance evidencing such coverage.

### **COMPLIANCE WITH LAWS/COVENANTS**

You warrant, covenant and represent that A) you have complied and will comply with all Applicable Law, as defined below, relevant to your performance under this Purchase Order; and B) all Merchandise delivered pursuant to our Purchase Order was produced, processed, manufactured, represented, described, packaged, labeled, tagged, packed, advertised, sold, invoiced and shipped in full compliance with Applicable Law; and C) neither our acquisition nor our sale of Merchandise shall violate Applicable Law. "Applicable Law" shall include, but not be limited to: (i) all existing laws, regulations, standards, orders and rulings, as amended, together with all standards, rules and guides of all United States federal, state and local governments (and all departments, boards, bureaus and commissions thereof), including, but not limited to the Federal Trade Commission Act, Fair Labor Standards Act, the Tariff Act of 1930, the Consumer



Product Safety Act, the Flammable Fabrics Act, the Textile Fiber Products Identification Act and regulations relating to statement of fiber content of rayon, wool, linen and other textiles contained in such Merchandise, the Wool Products Labeling Act, the Care Labeling Rule, the Fair Packaging and Labeling Act, the Magnusson-Moss Warranty Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, the Radiation Control for Health and Safety Act, the Food, Drug and Cosmetics Act, the Federal Child Labor Act, the Occupational Safety and Health Act, the Fur Products Labeling Act and the Foreign Corrupt Practices Act, OEHHA Proposition 65; and (ii) the laws, regulations and rules of all countries in which Merchandise is produced or delivered. You certify that the country of origin of all Merchandise will be as listed on the Merchandise labels. As to Merchandise manufactured outside the United States, you shall comply with all applicable laws of the country where the Merchandise was manufactured. You warrant, covenant and certify that no convict, slave, forced labor, child (younger than the legal age for completing compulsory education and in no event younger than 14 years of age) or indentured labor will be used by you, or by any entity with whom you have subcontracted, to process, manufacturer, label or ship the Merchandise. All wages, benefits and working hours set by you and all of the entities with whom you have subcontracted to process, manufacture, label or ship the Merchandise will comply with all applicable laws, rules and regulations.

#### **ADDITIONAL WARRANTIES:**

You warrant and represent that your workers are treated fairly and who in all cases are performing work voluntarily, not put at risk of physical harm, fairly compensated, and allowed the right of free association and not exploited in anyway. You further warrant and represent that you have not: (a) utilized child labor (child who is younger than the local age for completing compulsory education and in no event younger than 14 years of age); (b) utilized prison or forced labor (forced labor is work or service which is extracted from any person under the threat of penalty for its nonperformance and for which the worker does not offer himself voluntarily); (c) engaged in discriminatory practices on the basis of gender, racial characteristics, age, cultural or religious beliefs; (d) permitted the use of corporal punishment or other forms of mental or physical coercion or intimidation; and (e) engaged in bribes, kick-backs or other similar unlawful or improper payments to any person or entity to obtain or retain business. You agree to defend, indemnify and hold us harmless from your breach of the warranties and representations contained herein. If you breach these warranties and representations, we may take all appropriate corrective action, which may include cancellation of this Purchase Order or any other Purchase Orders placed with you by us in addition to any other remedies at law or in equity.

#### **INDEMNIFICATION:**

You agree to defend, indemnify and hold us harmless against any claim, liability, loss, damage or expense, including attorneys' fees, which may result from your breach of the warranties and representations contained herein or in any specific purchase order, or as a result of your negligence, recklessness or intentional misconduct or that of any employees, subcontractors or agents. You agree to execute and affix to your invoice any certificates and other reasonable documents in form satisfactory to us, or laboratory results, which we may require to evidence your compliance with the foregoing. You agree to furnish us with any continuing guaranty filed with the Federal Trade Commission or Consumer Product Safety Commission indicating that the products covered by our Purchase Order are properly labeled in accordance with the particular law and regulations pertaining thereto and comply with applicable standards or tests relating thereto. Your failure to provide any documents, warranties, certificates or laboratory results which we request to verify your compliance with United States or other countries' federal, state or local laws, orders, rules or regulations shall be deemed to be a material breach of the terms and conditions of our Purchase Order.





**WRITTEN WARRANTIES:**

In addition to the warranties contained herein, if a written warranty is offered with any Merchandise included in our Purchase Order, you shall so indicate on your invoice and provide us with copies of it with your first shipment. You will provide further copies to us upon our request.

**INFRINGEMENT:**

You grant to us a nonexclusive, royalty free right to use certain of your trademarks, trade names, brand logos, packaging images and copyrights relating to the Merchandise to be incorporated into our advertising, promotional materials and on our website. You warrant, covenant and represent that neither the Merchandise delivered pursuant to our Purchase Order nor your conduct (or that of your agents) will infringe or encroach upon the contractual or proprietary rights of any other person, firm or corporation, including without limitation, the designs, design patents, trademarks, trade names, trade dress, copyrights, rights of privacy and publicity, trade secrets and other proprietary/intellectual property rights of any third party, and you agree to defend, indemnify and hold us harmless from any claim, liability, loss, damage or expense, including attorneys' fees, which arises, grows out of or results from any claim of infringement of patents, copyrights, trademarks, trade names, trade dress, trade secrets or any other proprietary/intellectual property rights, or any claim of unfair competition, in connection with the Merchandise covered by our Purchase Order.

**DEFECTIVE OR NONCONFORMING MERCHANDISE**

We reserve the right to cancel, without your authorization, at any time, any portion of our Purchase Order and to return at any time, for full credit at your expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of materials or Merchandise shipped hereunder which is defective in material or workmanship or which differs in any way from the terms, specifications and/or warranties contained in our Purchase Order or implied by law (including without limitation Merchandise shipped in excess of quantities ordered and Merchandise which deviates from sizes, colors and styles ordered), and you shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties. We reserve the right (but shall not be obligated) to repair any defects and debit your account with the expenses involved when in our sole judgment the cost of making such repairs would be less than the cost of replacement by you or cancellation of our Purchase Order. Alternatively, at our option, Merchandise will be returned to you F.O.B. our specified receiving location, freight collect. Defective or nonconforming Merchandise bearing any AM Retail Group or AMRG identification or trademarks or trade names owned or licensed by us, and any artwork or graphic designs adopted, produced or designed by you for us, may not be sold, licensed or otherwise disposed of by you without our prior written consent, signed by an officer of AM Retail Group.

**SAMPLES:**

All Merchandise shall conform to Merchandise samples previously approved by us. No change or deviation from approved Merchandise samples or the method of production shall be made without our prior written approval. If samples are requested by our Purchase Order, you shall not forward quantity shipments until we have approved the samples submitted by you, fabricated by the method to be used in such quantity shipments.

**MERCHANDISE TESTING:**

Merchandise shall comply, and be accompanied by such material as necessary to comply with, Applicable Law as previously defined herein. Merchandise shall have been subjected to reasonable and representative tests, in accordance with procedures under Applicable Law including, but not limited to, all laws, rules and regulations referred to in the section of this Purchase Order entitled "Compliance With Laws/Covenants." Without limiting the foregoing,



Merchandise must comply with the Flammable Fabrics Act and Vendor must demonstrate that fabrics used or contained in the Merchandise otherwise subject to the Act and covered by and in the form delivered under this Purchase Order are not so highly flammable as to be dangerous when worn by individuals and, where required, are marked or labeled in accordance with the Act and amendments made thereto. At our request, you shall immediately submit, at your expense, samples of the Merchandise ordered pursuant to our Purchase Order for testing or examination at laboratories of our choosing or approved by us. Our right to require such testing shall be in addition to any rights we have to inspect and examine such Merchandise. Our acceptance of any Merchandise tested or examined (or our failure or refusal to require submission of the Merchandise for testing or examination) shall not be deemed a waiver.

**MANUFACTURING:**

Upon our request, you shall provide us with specific information in such detail as we may reasonably request, as to the location(s) and method(s) of manufacturing Merchandise. You shall provide us with prior written notice of any change in the location(s) of manufacturing Merchandise, and you shall be fully responsible for all costs and/or delays resulting from such changes. Without advance notice but during regular business hours, our designated representatives and any independent inspectors approved by us may inspect any production facilities at which any Merchandise or any components for Merchandise are being produced (including inspection of any of your facilities or facilities of any of your subcontractors and suppliers) and any and all Merchandise at any stage of production or delivery (including the delivery point specified in the applicable Purchase Order). We may require you to have Merchandise inspected prior to its shipment to the United States, such inspection to be performed at your sole expense by an independent inspector approved by us. Any inspection, any documentation thereof, and any corrective actions taken by you with respect to any Merchandise shall not be deemed acceptance of any Merchandise by AM Retail Group, or a waiver of any non-conformities or defects in any Merchandise, and shall not excuse any failure by you to deliver Merchandise in accordance with the terms of the applicable Purchase Order.

**CUSTOMER RETURNS:**

No printed materials or illustrations of any kind, including restrictions on consumers' rights to return Merchandise, except as required by law or approved in writing by us may be included anywhere with the packaging of Merchandise, which is the subject of our Purchase Order. In addition to any other remedies we may have hereunder, we may remove such offending materials and repack the Merchandise at your expense.

**TIME FOR DELIVERY:**

Time is of the essence as to the dates specified herein for shipment and delivery. You bear sole responsibility for (i) shipment after the "Ship Date" specified in our purchase order or (ii) shipment earlier than ten (10) days before such "Ship Date". Violations of such shipment or delivery terms constitute a material breach, and may result in automatic cancellation of our Purchase Order, and Merchandise rejected by us may be returned to you without your authorization and at your expense, which shall include our administrative expense.

**EXTRA CHARGES:**

Except as specifically noted in our purchase order, or as otherwise agreed to by us in writing, the prices recorded on our purchase order are not subject to any additional or extra charges, including but not limited to charges for pre-packs, cartons, carton markings, hangers, price tickets, hang tags, hanging bars, handling, drop shipments, insurance, cartage or minimum orders or any taxes or excise charges levied on processors, manufacturers, wholesalers or otherwise.



**PRICE PROTECTION:**

Our Purchase Order is placed with the understanding that you are willing to sell the same Merchandise sold hereunder at equivalent prices and on proportionally equal terms to any other purchaser similarly situated. If, before the final delivery under our Purchase Order, you offer to sell Merchandise substantially of the same kind as ordered herein to any other purchaser similarly situated, at lower prices and/or on terms more favorable to the purchaser than stated in our Purchase Order, the prices and/or terms in our Purchase Order are hereby automatically revised to equal the lowest prices and/or most favorable terms at which you so offer to sell such similar Merchandise, and payment hereunder shall be made according to the lowest prices and the more favorable terms. You shall meet lower prices of legitimate competition or, in lieu thereof, accept cancellation of this Purchase Order.

**DEBIT BALANCES:**

Upon written notice, you shall immediately refund any amount due us under our Purchase Order or for any other reason.

**SET-OFF:**

You agree that we may set-off any amounts which may become payable to you under our Purchase Order or otherwise against payment of any amounts due from you to us whether arising under our Purchase Order or otherwise including Chargeback's per the Vendor Compliance Section in the Vendor Guidelines.

**PASSAGE OF TITLE:**

The terms of our purchase orders are F.O.B. Origin unless otherwise specified in the purchase order. We will assume ownership at the FOB point specified (if not specified, then FOB Origin). However, we shall have no obligation to unpack or inspect the Merchandise prior to resale thereof. You shall be responsible for the consequences of negligent manufacturing and/or packing, and for the consequences of negligent handling, prior to the point when we assume ownership of the Merchandise. We reserve the right to return for full credit at your expense (including but not limited to cost of packing and transportation to and from source), without your authorization, at any time, all or any part of materials or Merchandise shipped hereunder which is defective in materials or workmanship, which fails to pass testing required by law and/or specified by AM Retail or its customer(s), or which differs in any way from the terms, specifications and/or warranties herein contained or implied by law (including without limitation Merchandise shipped in excess of quantities ordered and Merchandise which deviates from sizes, colors and/or styles ordered).

**NONCOMPLIANCE:**

All administrative expenses and charges incurred by us, caused by your deviation from or violation of these Terms and Conditions and our Vendor Guidelines, and all other shipping, routing or invoicing instructions relating to our Purchase Order, will be charged to you and deducted from our payments to you. In the event you dispute our imposition of charges for deviation from or violation of the foregoing but fail to furnish our Accounts Payable Department with proof of your compliance within six (6) months following shipment of the Merchandise pursuant to our Purchase Order, you shall be deemed to have waived any objection or defense to such imposition of charges.

**REMEDIES:**

You shall furnish us with proof of delivery of the Merchandise at our request. In the event of your failure to notify our Accounts Payable Department in writing within six (6) months following





shipment of Merchandise pursuant to our Purchase Order of our nonpayment of your invoices, we shall have no further obligation to pay you for Merchandise shipped pursuant to our Purchase Order. Unless an action is commenced or set-off interposed within one (1) year after the same accrues, you shall be barred from commencing an action or interposing a set-off against us for breach of contract, nor shall any counterclaim or set-off be interposed by you, by reason thereof, including without limitation: (i) for monies due or to become due hereunder, (ii) for the amount of any discounts, allowances or other deductions from remittances made on account of Merchandise purchased hereunder, (iii) disputing our right to return all or any part of the Merchandise purchased hereunder, or (iv) the fact of the making of any returns, unless such action is commenced or set-off interposed within one (1) year after the same accrues. In addition to any other right or remedy provided for herein or by law or in equity, we reserve the right, without liability, in the event of your breach of our Purchase Order agreement, to purchase substitute items elsewhere and to charge you with any loss incurred. Any provision herein for delivery of Merchandise in installments shall not be construed as making your obligations severable. Shipments of Merchandise sent C.O.D. without our written consent will not be accepted and will be at your risk. If any provision of any Purchase Order or these Terms and Conditions is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed modified to the extent necessary to make such provision enforceable by such court, and the invalidity, in whole or in part, of any portion of our Purchase Order or these Terms and Conditions shall not impair or affect the validity or enforceability of the remaining provisions thereof. All rights and remedies under our Purchase Order are cumulative and the exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided for herein or at law or in equity.

**WAIVER:**

Our waiver of any term or condition of our Purchase Order shall not constitute a waiver for purposes of any subsequent Purchase Order nor shall it constitute custom or usage for a course of performance between us insofar as subsequent Purchase Orders are concerned. With respect to any shipment moving to our specified receiving location on freight-prepaid terms, you will indemnify and hold us harmless from any and all freight, storage, accessorial or demurrage charge claims assessed by any carrier. You shall indemnify us and hold us harmless from any costs, loss, liability or expense, including attorneys' fees, arising in any way out of your breach of any term or condition contained herein.

**BACK ORDERS OR PARTIAL SHIPMENTS:**

Backorders or partial shipments will only be accepted with advance approval in writing from AM Retail.

**CONFIDENTIALITY:**

All Proprietary Information (as hereinafter defined) is confidential and is our sole and exclusive property notwithstanding how you were provided access to it by us. You shall not in any manner use, reproduce or disclose, directly or indirectly, to any of your employees, agents, affiliates or any third party at any time any Proprietary Information except in connection with your performance under any Purchase Order and then only to the minimum extent necessary on a need to know basis. Proprietary Information that is provided by us to you via our secure website shall only be made available by you to persons authorized by us to view or receive it and only as permitted by the Terms of Use of our secure website. You shall only use proprietary Information in a manner consistent with our Information Security policies, in effect from time to time. Upon demand by us, you shall deliver to us immediately all materials containing Proprietary Information in your possession (whether prepared by us or you). Proprietary Information shall consist of: (A) all information relating to our sales, pricing, costs, inventory, operations, plans, programs, raw



materials, submaterials, vendors, Merchandise purchased by us from you, and all information related to such Merchandise purchases, including, but not limited to shipment and transportation thereof and reports relating thereto; (b) all of our trade secrets including any and all product designs, trade dress information, trend information, customer lists, customer survey responses and any other information concerning any of our products, marketing strategies or customers; (c) specifications relating to the design and/or manufacture of any Merchandise; (d) patent applications, copyrights and other intangible/intellectual property owned by or licensed to us; (e) all information provided by us to you via our secure website, including, but not limited to Unit Planning Reports from our Projection Analysis, Sales and Inventory Reports from AM Retail Group Data Warehouse and our Vendor Scorecard; and (f) any other information provided by us to you that is not publicly available regardless of where located or the manner or medium by which you have been provided access to it by us. You agree to defend, indemnify and hold us harmless from any breach by you, your employees, agents or affiliates of the warranties and representations contained herein. The provisions of this Section shall survive the cancellation or termination of any Purchase Order.

### **RESERVATION OF AM RETAIL GROUP RIGHTS:**

We reserve the right to advertise, offer Merchandise for sale and to sell such Merchandise at any retail facility, through any wholesale channels, through Internet websites and/or by means of any medium, including electronic or other nontraditional facilities or venues. The foregoing reservation is an essential term of all of our transactions effected under or pursuant to this Purchase Order.

### **OFFER OF EMPLOYMENT:**

It is an essential and material term and condition of this Purchase Order that you expressly acknowledge and agree that we may terminate and cancel any Purchase Order, in whole or in part, in the event that you, without our consent, extend an offer of employment to, employ, retain, hire, engage (or attempt any of the foregoing) or otherwise secure the services of a person who at the time of your conduct or within the preceding ninety (90) days was employed by us (or any of our affiliates doing business with you) in the position of Buyer or an equivalent or superior position.

### **INDEPENDENT CONTRACTOR:**

You acknowledge and agree that you are an independent contractor. No provision of this Purchase Order shall, or shall be deemed or construed to, create any other relationship between the parties such as employer and employee, principal and agent, partners, joint ventures, or any other association other than that of independent contractors. Accordingly, you are not and shall not be deemed to be an agent of us and are without any authority to enter any contract or take any action on behalf of or so as to obligate any of our affiliates or us. Except as otherwise specified herein, you shall have exclusive control and discretion over the manner, means, details and methods by which you shall perform the services hereunder, and shall be solely responsible for the provision of all tools, equipment, and facilities necessary for the performance and for the payment of all license and other fees applicable to your performance.

### **AUDIT:**

During normal business hours, we and/or our designated agent shall have the right to inspect your facility (ies) and/or audit your records and documents with respect to your sales to us and your performance pursuant to any Purchase Order(s) to ensure that you are in compliance with the provisions of this Purchase Order. During normal business hours, we and/or our designated agent shall have the right to inspect your facility (ies) and/or audit your records and documents with respect to your sales to us and your performance pursuant to any Purchase Order(s) to ensure that you are in compliance with the provisions of this Purchase Order.



**BENEFICIARY OF AGREEMENT:**

All of our affiliates are and shall be deemed to be third party beneficiaries of this Purchase Order. We and each of our affiliates shall be deemed to be a third party beneficiary of your agreement(s) with any third party as to the production or distribution of the Merchandise and any component thereof.

**SEVERABILITY:**

The unenforceability or illegality of any provision of this Purchase Order shall not render any other provision of this Purchase Order unenforceable, null or void so long as the provisions remaining are sufficient to constitute a legally binding agreement.

**ENTIRE AGREEMENT:**

This Purchase Order, including attachments and material incorporated herein by reference, constitutes the entire agreement of the parties as to its subject matter. It supersedes all prior representations or agreements, oral or otherwise, with respect thereto. No obligation to enter into any further transaction may be implied from this Purchase Order. This provision is applicable in all circumstances, without regard to whether this Purchase Order establishes a new transaction, confirms an existing arrangement or prior course of dealing between us.

**MISCELLANEOUS:**

As used in our Purchase Order, the words "you" or "your" refer to Vendor, as seller and the words "we", "us" and "our" refer to AM Retail Group and/or its subsidiaries or affiliates, as buyer. Our Purchase Order shall be governed by and construed in accordance with the laws of the State of Minnesota. Any suit, action or proceeding against us with respect to any Purchase Order or the parties' actions with respect thereto shall be brought in state or federal court located in Hennepin County, Minnesota. You waive any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.