

GCO CANADA INC.
6300 Dixie Road
Mississauga, Ontario, Canada
ON L5T 1A7

Please make replies to:

Genesco Inc.
1415 Murfreesboro Road, Suite 638
Nashville, Tennessee, USA 37217

TERMS AND CONDITIONS OF PURCHASE BY GCO CANADA INC.
(INTERNATIONAL)

The following terms and conditions shall apply to all purchases of goods by GCO Canada Inc. ("**Buyer**") from a supplier, vendor or manufacturer ("**Seller**") that is a non-resident of Canada and shall form an integral and essential part of the agreements of purchase that may be entered into between Buyer and Seller from time to time, as though fully set out on the face of the purchase order. These Terms and Conditions of Purchase ("**Terms**"), and the provisions of the Routing Guide, as defined below, all in the forms posted at www.genescopartners.com on the date of the purchase order, together with the specific information set forth on the face of a Buyer-generated purchase order (including an order transmitted by electronic data interface or other agreed-upon means), are the entire agreement of the parties ("**Contract**"). To the extent of any conflict between a purchase order, the Routing Guide and/or these Terms, the foregoing shall be the order of precedence, as applicable.

1. CONTRACT

- (a) Buyer's commitment to purchase merchandise shall arise only at such time as Buyer issues a purchase order for specified quantities of merchandise and Buyer's obligation to purchase merchandise shall be limited to the quantities contained and the prices specified in the purchase order issued. All shipments against a valid purchase order shall be considered acceptance of the purchase order.
- (b) The addition or modification of any terms of an order by Seller shall be void and of no effect, and shall not affect the acceptance of any order, unless specifically agreed to by Buyer in writing. Seller shall ship only the quantities of merchandise ordered by Buyer in the application purchase order. Seller shall not make any substitutions without Buyer's prior written approval.
- (c) Any estimate or forecast of Buyer's future needs for merchandise is for long range planning purposes only and shall in no way represent a commitment of Buyer, which shall have no responsibility or liability for any actions taken by Seller based on such estimates or forecasts.

2. ELECTRONIC ORDERS AND INVOICES

- (a) Seller shall receive purchase orders and send invoices electronically unless otherwise agreed to by Buyer. Seller agrees to comply with Buyer's electronic data interface ("**EDI**") requirements and procedures, which may be amended from time to time. In connection therewith, Seller agrees that:

- (i) any electronic transmission with Buyer or printout thereof shall constitute an original signed document and neither party shall contest the validity of such document because of the absence of a signature;
 - (ii) all rights, duties and obligations, which would accrue upon receipt of data in the form of paper documentation will also accrue upon receipt of the data in electronic form via EDI; and
 - (iii) Buyer's evidence relating to electronically transmitted data will be deemed to be conclusive and binding on the parties and Seller will not contest same, unless there is a manifest error.
- (b) To facilitate EDI, Seller may be given access to Buyer's systems, which may include systems managed on behalf of Buyer by third party electronic commerce service providers ("**Buyer Systems**"). In connection with any use by Seller of the Buyer Systems, including EDI applications, Seller agrees as follows:
- (i) Seller shall ensure that access to the Buyer Systems is restricted to those employees of Seller who are required to have such access to conduct business with or on behalf of Seller, and Seller shall ensure that any such access will be restricted by passwords;
 - (ii) Seller shall ensure that any access to the Buyer Systems is not used in any way which could damage the Buyer Systems or software and in particular agrees that it shall protect against the introduction into the Buyer Systems of viruses, worms or other damaging code; and
 - (iii) Seller shall establish a user identification which will be sufficient for Buyer to identify Seller and verify the source and authenticity of any electronic document.

3. **PACKING, SHIPPING AND BILLING**

- (a) Seller shall be responsible for providing adequate packaging, packing, shipping and billing.
- (b) Seller shall comply with all packaging, packing, shipping and billing requirements reasonably requested by Buyer or established by applicable laws, regulations, carrier tariffs and classifications, including without limitation those set forth in the Routing Guide posted on the internet at <http://www.genescopartners.com> ("**Routing Guide**"), as it may be amended from time to time.
- (c) Time is of the essence. All merchandise must be delivered to Buyer's designated carrier on or before the "Cancellation Date" specified in the purchase order for merchandise or services, but not before the earliest ship date specified. Buyer may regard the purchase order as having lapsed if merchandise is delivered to the designated carrier after the "Cancellation Date."

- (d) Unless other terms are specified on the face of the purchase order, the price specified in the purchase order shall include all costs of packing merchandise and all costs of delivery of merchandise to the "FCA destination point" or other delivery point specified in the purchase order, including (a) any commissions to selling agents, and (b) other incidental charges, whether or not such charges are itemized separately on invoices to Buyer. Seller shall bill Buyer for the merchandise at the price specified in the applicable purchase order.
- (e) Seller shall invoice Buyer for the merchandise, at the prices specified in the applicable purchase order(s), and in accordance with any other agreed terms in the applicable purchase order(s). All invoices for merchandise must be written in the English language, must set forth prices solely in Canadian Dollars, which is the currency on which payment will be made unless otherwise indicated on the purchase order, and specify the country of origin, the name of an English-speaking employee of Seller who has knowledge or can readily obtain knowledge of this transaction, the number of the purchase order, the style number and Buyer's items number shown on the purchase order, the quantities shipped, the carrier used and, if then available, the bill of lading number. Each invoice shall certify that the stated merchandise was delivered to Buyer. Buyer may reject any invoice if it is not complete, or if Buyer has reasonable doubt that the merchandise was delivered, and in such cases, Seller shall provide further information requested by Buyer.

4. DELIVERY

- (a) Notwithstanding anything to the contrary herein, delivery shall not be deemed to be completed until merchandise is actually received, inspected and accepted by Buyer. Buyer's rights to recover for defects or Seller's non-compliance with the Contract (including these Terms) are not waived by acceptance of the merchandise or by failure to notify Seller thereof. Notwithstanding the absence of an exception notation on a freight receipt or any other term in a freight receipt, bill of lading or other shipping document, Buyer retains the right to pursue a claim or chargeback against Seller for shortage, damage or other defect of delivered merchandise following delivery of the merchandise, and for violations of the Contract (including these Terms).
- (b) Seller agrees to cooperate with Buyer if Buyer desires to file a claim against a third party for any loss of or damage to the merchandise while in transit.

5. IMPORTED MERCHANDISE

- (a) All discounts and charges relating to the imported goods (including, without limitation, amounts paid by the Buyer to the Seller for transportation and associated costs from the place of direct shipment outside of Canada to the final destination in Canada, duties and taxes, packing costs, assists, and any other incidental charges) must be itemized separately on Seller's invoice. Seller shall provide, or shall cause its shippers to provide, a copy of the freight invoice to Buyer in order to evidence transportation and associated costs relating to the movement of the merchandise from the place of direct shipment outside of Canada to the final destination in Canada.

- (b) For purchase orders of products placed for export to Canada, Seller will ensure that the products will be transported from the place of direct shipment outside of Canada directly to Canada without diversion.
- (c) All documentation required by the laws and regulations enforced by the Canada Border Services Agency, Department of Foreign Affairs and International Trade, and/or any other government department in order for the merchandise to be delivered to Buyer as anticipated by the purchase order (including, without limitation, commercial invoices, packing lists, bills of lading, certificates of origin, applicable quotas, textile declarations, certificates of compliance, import permits, or other governmental authorizations that may be required for lawful and expeditious export from the country of origin and subsequent importation into Canada) shall be provided by Seller to Buyer at the time of shipment. Seller shall also provide to Buyer sufficient information in the form of documentation to allow Buyer to correctly classify the merchandise for tariff classification, quota, and/or anti-dumping and/or countervailing duty purposes, as well as to declare proper values and origin of the merchandise and/or to apply all relevant import laws and fulfill such requirements. Seller shall be liable for detention or referral of entry (by applicable governmental authorities) of any merchandise that is shipped without proper documentation or other lawfully required identification.
- (d) For merchandise that may be subject to quota, Seller shall obtain, or shall cause its shippers to obtain, sufficient quota and necessary certifications for the importation of the merchandise into Canada. Seller shall ensure, or shall cause its shippers to ensure, that all quotas and/or certifications reflect the actual value and quantity of the merchandise subject thereto and correspond with the negotiated prices and quantities disclosed in the commercial documents for the merchandise. If Seller fails, or fails to cause its shippers, to supply Buyer or its agent with complete proper documentation, Buyer may at its sole discretion and without prejudice to any other remedy provided for under the Contract (including these Terms), at law, or in equity, cancel the shipment of merchandise. Seller shall incur all costs pertaining to the cancelled shipment.
- (e) Seller agrees, and shall cause its shippers, to retain all documentation relating to merchandise sold to Buyer for sale for export to Canada for a period of six (6) years and, in the event of an audit by the Canada Border Services Agency or other government authority, Seller agrees, and shall cause its shippers, to cooperate with Buyer to complete such an audit, including, but not limited to, responding to requests for information required to satisfy government officials of the veracity of claims made by Buyer in connection with import declarations and/or any other declarations required to be made under applicable Canadian laws and/or regulations.
- (f) Buyer is committed to strengthening overall supply chain security, and Buyer expects its supply chain business partners to share that commitment. To that end, Seller hereby expressly agrees: (i) to provide all requested assistance to Buyer necessary to fulfill any commitments and obligations under the Canadian Partners in Protection Program (PIP); and (ii) to comply with any and all current or future laws, regulations, rules, industry guidelines or recognized best practices relating to supply chain security and anti-terrorism. Without limiting the foregoing, upon written request by the Buyer, Seller agrees to follow any relevant requirements, guidelines or instructions set out by the Canada Border Services Agency (www.cbsa-asfc.gc.ca), including, but not limited to, having a written security procedure plan in place that addresses physical security, access

controls, procedural security, personnel security, education and training awareness and threat awareness.

- (g) Seller certifies that in the event that Seller undertakes and warrants that products purchased pursuant to a purchase order under the Contract (including these Terms), which were or will be sold to Buyer, qualify for the North American Free Trade Agreement ("NAFTA") tariff treatment (or for tariff treatment under another bi-lateral or multi-lateral arrangement) in accordance with the specific rules of origin set out in NAFTA (or such other bi-lateral or multi-lateral arrangement) and in accordance with Canadian laws and practices. Seller will provide, and will cause its shipper to provide, to Buyer and/or its customs broker, valid, executed Exporter's Certificates of Origin covering each product listed for which a claim for NAFTA treatment (or tariff treatment under another bi-lateral or multi-lateral arrangement) may be made.
- (h) Seller warrants that all sales made hereunder are or will be made at not less than normal value under Canadian anti-dumping law, and without use of countervailable subsidies, the foregoing in accordance with the *Special Import Measures Act* and associated regulations. In the event that any products purchased become subject to a notice of initiation of an anti-dumping or anti-subsidy investigation by the CBSA, Buyer may, in its sole discretion, cancel any purchase order that relates to such products without incurring any liability.
- (i) Seller warrants that it will not cooperate with or participate in an international boycott unless such boycott is consistent with Canadian law and regulations including, but not limited to, the *Foreign Extraterritorial Measures Act and Regulations*.
- (j) Seller assumes full responsibility for obtaining, and will cause its shipper to obtain, all permits, quotas, safety standard certifications, or other Canadian legal and regulatory compliance documentation required to legally export the products from their place of production or storage to Canada.
- (k) Transferable credits or benefits associated with the products and/or materials comprising the goods, including trade credits, export credits or rights to the refund of duties, taxes or fees, belong to Buyer unless prohibited by applicable law. Seller will provide Buyer with all information and records relating to the products and/or materials comprising the goods necessary for the Buyer to (i) receive these benefits, credits and rights; (ii) fulfill any customs obligations, origin of making or labeling requirements and certification or local content reporting requirements; (iii) claim preferential duty treatment under applicable trade preference regimes; and (iv) participate in any duty deferral or free trade zone programs of Canada.
- (l) Seller warrants that the importation and sale of merchandise in Canada are not in violation of any applicable Canadian laws. Seller acknowledges that (i) misstatements as to country of origin, identification of factory, tariff classification, valuation or material content of products; (ii) violation of intellectual property rights; or (iii) other failures to comply with Canadian customs or other governmental regulations or requirements may result in the assessment against Buyer of substantial fines and penalties, as well as possible confiscation of non-complying shipments. Seller agrees to hold harmless and indemnify Buyer and its affiliates for any assessments and/or damages (including, but not limited to, customs duty or tax assessments, penalties, fines, claims, and legal and administrative expenses) that result from Seller's failure to act in accordance with

applicable laws or regulations, Buyer's instructions and/or established commercial practices and procedures.

6. PRODUCTION REQUIREMENTS, LABOUR STANDARDS

- (a) Seller represents and warrants that all merchandise sold to Buyer hereunder has been or will be produced in compliance with the applicable requirements of Canadian federal, provincial, territorial and local laws, regulations and other requirements, including those relating to or governing environmental protection, consumer product health and safety, textile flammability and employment standards.
- (b) Seller shall strictly adhere to all applicable laws and prohibitions of the country in which the merchandise is manufactured and, as applicable, to the laws of Canada with respect to Seller's production facilities and business and labor practices, including laws governing the working conditions, compensation and age of the work force. Seller shall not use or permit to be used illegal child or forced labor in the manufacture of merchandise.
- (c) Seller will (or Seller will cause manufacturer to) provide with each shipment of merchandise a certification identifying the factory where the merchandise was manufactured and confirming compliance with the standards set forth in this Section and will provide such other certifications related to the subject matter of this section as Buyer may request from time to time.

7. LABELING AND CONTENT REQUIREMENTS

- (a) All merchandise sold to Buyer hereunder shall be packaged, tagged, labeled and invoiced in compliance with, and all product-related marketing or promotional materials provided to Buyer will comply with, applicable requirements of all Canadian federal, provincial, territorial and local laws, administrative regulations, Canada Competition Bureau rules, guides or orders applicable to the merchandise covered by the purchase order and any other requirements, including, without limitation, those governing product and package labeling; price discrimination; textile or stuffed article labeling, tagging and registration; and language and bilingual requirements.
- (b) Without limiting the generality of the foregoing, any merchandise sold to Buyer hereunder that incorporates substances or materials for which a warning must be provided under any law or regulation shall be labeled with or otherwise accompanied by a warning in compliance with such law, and shall comply with any applicable health and product safety requirements (including lead limits) under the Canada Consumer Product Safety Act and any other applicable laws and regulations.
- (c) Seller shall not provide Buyer with any products, including without limitation textile or apparel, which are falsely or fraudulently labeled as to country of origin information or otherwise do not comply with Canadian labeling requirements.

8. ABSENCE OF CONFLICT MINERALS

- (a) No product purchased and sold hereunder contains "Conflict Minerals" (as hereinafter defined) that are necessary to such product's functionality or its production and that originated in the Democratic Republic of Congo or an adjoining country (including Sudan, Uganda, Rwanda, Burundi, Tanzania, Zambia, Angona, Congo, or the Central African Republic) (collectively, the "Region"). "Conflict Minerals" includes columbite – tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, including tantalum, tin, tungsten and any other mineral or derivative determined by the U.S. Secretary of State to be financing conflict in the Region.

9. PURCHASE FOR RESALE; SELLER'S INTELLECTUAL PROPERTY

- (a) The merchandise purchased hereunder is purchased for resale in Buyer's retail stores and through direct to consumer mail order and internet channels.
- (b) Seller hereby grants to Buyer a non-exclusive, royalty free license to use Seller's trademarks and trade names associated with the merchandise in advertising materials, in print catalogs, on internet websites and otherwise in connection with the resale of the products, subject to such reasonable written restrictions on use as Buyer shall have received from Seller prior to or simultaneously with entry into the purchase order pertaining to such merchandise.
- (c) To the extent that Seller or third parties retain ownership rights in any products that are the subject of a purchase order, Seller hereby grants to Buyer an irrevocable, worldwide, non-exclusive, royalty-free right and license to use, distribute, display, sell, offer to sell and import such materials. Seller hereby warrants that it owns or has acquired rights in all such intellectual property necessary to grant the foregoing license and intellectual property rights. Seller hereby grants to Buyer a non-exclusive, royalty-free, fully paid, irrevocable license to use any intellectual property owned by or licensed to Seller prior to the term of the Contract.

10. BUYER'S INTELLECTUAL PROPERTY

- (a) Buyer is the owner or licensee of certain intangible assets including its trade names, service marks and logos as well as various proprietary brand names, marketing handles and other trademarks relating to merchandise ("**Buyer Marks**"). Seller agrees not to use any or display of the Buyer Marks directly or indirectly for advertising or publicity purposes (including, but not limited to, referencing in press releases or customer lists) without, in each instance, obtaining the prior written consent of a duly authorized officer of Buyer. Seller agrees not to dispute, interfere with or contest for any reason the validity, ownership, goodwill, reputation or enforceability of any of the Buyer Marks, nor directly or indirectly attempt to dilute the value of the goodwill attached to the Buyer Marks.
- (b) If Buyer directs Seller to mark or label any merchandise with any of the Buyer Marks, such marking or labeling shall be limited to the indicated quantities of such merchandise

and shall be done in accordance with Buyer's specific instructions. Seller shall not make any changes to such merchandise without the prior written consent of Buyer; a Seller that is a manufacturer for purposes of these Terms shall not use any agents or subcontractors in connection with the manufacturing, sale and distribution of such merchandise without the prior written consent of Buyer (and for certainty, a Seller that is a wholesaler for purposes of these Terms may use agents or subcontractors in connection with the manufacturing, sale and distribution of such merchandise without the Buyer's consent). Seller shall not sell or otherwise dispose of, nor permit the sale or disposal of, any merchandise bearing any of the Buyer Marks to anyone other than Buyer without first obtaining Buyer's express written consent, which may be withheld in Buyer's sole and absolute discretion. The foregoing restriction includes, without limitation, any products that are returned or rejected by Buyer, and samples provided to Buyer. Seller shall have no interest or rights in any of the Buyer Marks.

- (c) Any approved use of any of the Buyer Marks by Seller and the goodwill generated thereby shall inure to the benefit and be the property of Buyer. Seller acknowledges that a violation of any provision set forth in this Section constitutes a breach of the purchase order and Contract that will cause immediate and irreparable harm and that Buyer will be entitled to (among other things) immediate preliminary and/or permanent injunctive relief against Seller.
- (d) Merchandise (irrespective of whether it is defective or nonconforming) that bears any of the Buyer Marks may not be disposed of by Seller without Buyer's prior written authorization, which may be withheld in Buyer's sole and absolute discretion.

11. TAXES

- (a) Seller's prices set forth on the purchase order shall include all sales, use, excise, value-added or other similar taxes, duties and other like charges imposed by any taxing authority or any other body having jurisdiction outside of Canada. In the event that Buyer be assessed an amount by tax authorities in respect of payments to a non-resident for services rendered in Canada by Seller, Buyer shall be entitled to deduct or withhold the amount, plus any penalties and interest, from any amounts paid or credited to Seller, or to otherwise recover them from Seller.
- (b) Buyer shall have the right to withhold, from payments to be made under the Contract, any and all amounts which it may be required to withhold under the laws of Canada or of its provinces and territories and to remit such amounts to the applicable authorities in Canada.
- (c) Notwithstanding the foregoing, the purchase order will not reflect any sales and use taxes which are levied on the retail sale of the merchandise by Buyer and measured by the contract or sales price to the ultimate consumer.

12. REPRESENTATIONS, WARRANTIES AND COVENANTS

- (a) Seller represents, warrants and covenants to Buyer that:
 - (i) all merchandise sold to Buyer under the purchase order in which these Terms are incorporated shall be merchantable and conform in all respects to applicable law and to the specifications set forth herein or otherwise applicable to such

merchandise, and shall be free from any defects in design, construction, materials, packaging, or workmanship, and ready for shipment at the times and in the quantities herein specified;

- (ii) all merchandise furnished to Buyer will comply with and be manufactured, priced, sold and labeled in compliance with all applicable Canadian federal, provincial, territorial and local laws and regulations, including without limitation environmental protection laws, labour laws, consumer product safety laws, textile labeling laws, intellectual property laws, and applicable industry codes and standards;
 - (iii) all merchandise sold to Buyer hereunder (including its design, manufacture, production, use, supply or offering for sale, and including any packaging and/or labeling) does not and shall not infringe or otherwise violate any patent, trademark, copyright, industrial design, trade name, trade secret, or other proprietary or contractual right of any third party;
 - (iv) its operations comply with all applicable laws and regulations of Seller's country and its political subdivisions, including employment and labour, environmental protection and intellectual property laws and regulations;
 - (v) all merchandise shall be free from any lien, claim, encumbrance or security interest of any kind and that no rights of any third party are necessary to market, license or sell the merchandise;
 - (vi) there are no restrictions or limitations on Seller's ability to manufacture, produce, sell or deliver the merchandise; and
 - (vii) Seller has and will continue to have in place a sufficiently tested, suitable and reliable product safety and quality assurance program, including a process to effectively and efficiently address product recalls.
- (b) Seller acknowledges and agrees that the terms in this Section 11 constitute material terms, which shall survive acceptance, inspection and any subsequent sale of any merchandise purchased from Seller by Buyer pursuant to a purchase order. Seller shall notify Buyer immediately upon becoming aware of any matter which would result in any of the foregoing representations and warranties being false or incorrect.

13. RECALLS

- (a) If any merchandise is the subject of any order or requirement pursuant to any law requiring either Buyer or Seller to recall, replace, repair or otherwise take back all or any part of the merchandise, or if Seller or Buyer reasonably determines that it is necessary to effect a voluntary recall prior to any such order or requirement, Seller shall be responsible for all costs, expenses and other losses (including lost profits) associated with or resulting from such action. Such costs and expenses include, without limitation, costs and expenses relating to handling and preparing the merchandise for reshipment to Seller or other designee; destroying the merchandise, if necessary; and replenishing inventory as a result of the removal, return or necessary destruction of the merchandise.

- (b) If Seller is notified by any governmental agency regarding the possibility of a product recall, Seller shall immediately notify Buyer in writing.

14. INDEMNIFICATION

- (a) Seller agrees to protect, defend and hold harmless and indemnify Buyer, its affiliates and any ultimate retailer of the merchandise, and each of their respective directors, officers and employees (the "**Indemnitees**") from and against any and all claims, demands, any type of damages, equitable remedies including an accounting of profits, actions, liabilities, losses, costs and expenses (including reasonable attorneys' fees) incurred or which may be brought against any of the Indemnitees:
 - (i) arising out of any actual or alleged infringement of any patent, trademark, copyright or any other intellectual property right, proprietary right or contractual right of any third party, whether registered or unregistered, by any merchandise (including any packaging, labeling or other product inputs or elements) sold to Buyer hereunder or any unfair competition involving such merchandise;
 - (ii) arising out of any actual or alleged death of or injury to any person, damage to any property, or any other damage or loss suffered by any person resulting or claimed to result in whole or in part from any actual or alleged defect in such merchandise, whether latent or patent, including actual or alleged improper construction or design of such merchandise or the failure of such merchandise to comply with any specifications or with any expressed or implied warranties of Seller, or any use or handling of any merchandise delivered by Seller;
 - (iii) arising out of any actual or alleged violation by such merchandise, or its manufacturing, possession, use or sale, of any law, statute or ordinance or any governmental administrative order, rule or regulation;
 - (iv) arising out of Seller's assembly or manufacture of merchandise covered by this Contract;
 - (v) arising out of Seller's or its employees', agents', affiliates', suppliers' or subcontractors' negligence, recklessness or intentional wrongdoing, including the violation of any laws, regulations or other requirements;
 - (vi) otherwise arising in connection with the merchandise in any way, including but not limited to strict liability claims;
 - (vii) arising out of Seller's breach of any of its obligations, representations and warranties hereunder;
 - (viii) in connection with any consumer claim in connection with any product warranties, including, without limitation, claims arising from Seller's failure to comply with its product warranty obligations;
 - (ix) arising out of any failure by Seller to comply with any third party use requirements, specifications or descriptions;

- (x) arising out of any failure of the merchandise to comply with or conform to product specifications, or any express or implied statements, representations, warranties and/or covenants that are published or made available by Seller on labels, promotional matter or otherwise; and/or
 - (xi) arising out of any seizure by public authority of any merchandise or any alleged or actual violation by such merchandise in connection with its manufacture, sale or resale, of any law or regulation.
- (b) These agreements and obligations of Seller shall not be affected or limited in any way by Buyer's extension of expressed or implied warranties to its customers. The indemnification obligations set out herein shall survive the termination or expiration of the Contract, these Terms or any purchase order.
 - (c) Buyer shall have the right, but not the obligation, to participate as it deems necessary, at Seller's sole cost and expense, in the defense of any matter for which indemnification is sought under the Contract (including these Terms). Upon request by Buyer, Seller shall assume the control of the defense of any such matter. In such event, Seller shall (i) retain counsel reasonably satisfactory to Buyer; (ii) promptly supply Buyer with all material information regarding such matter; (iii) promptly reply to any request for information by Buyer regarding the matter; and (iv) ensure regular reporting to Buyer on such matter no less than once per calendar quarter. Seller shall not enter into any settlement of any claim without the prior written consent of Buyer.

15. INSURANCE

- (a) Seller will at all times maintain general liability and product liability insurance, from a reputable insurer with a credit rating reasonably acceptable to Buyer, 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, but in any event not less than \$2,000,000 for combined single limit for personal injury and property damage to any one person and naming Buyer as an additional insured to cover Seller's indemnification obligations described herein.
- (b) At Buyer's request, Seller will provide Buyer with a Certificate of Insurance evidencing such coverage and providing for not less than 30 days' notice of cancellation or amendment of such coverage.
- (c) No insurance policy shall satisfy or limit any requirement of Seller to indemnify and hold harmless Buyer as required in the Contract (including these Terms). No review or approval of any such insurance certificate by Buyer shall derogate or diminish Buyer's rights or Seller's obligations contained in the Contract (including these Terms).

16. PAYMENT DISCREPANCIES AND REFUNDS

- (a) Seller waives any claim related to alleged underpayments, chargebacks, return authorizations, offsets or other payment disputes if detailed written notice of the claim and supporting documentation establishing its validity to Buyer's reasonable satisfaction have not been furnished to Buyer within one year after the earlier of the original invoice date or the date of delivery to Buyer of the goods subject to the dispute. Refunds for returns may be credited against pending or future orders only with Buyer's express

consent. In any event, refunds for returns will be paid to Buyer not more than 120 days after the return date.

17. BUYER'S REMEDIES, CANCELLATION, SELLER SHIPMENTS AND RETURNS

- (a) Buyer may cancel the purchase order in whole or in part (including reject, refuse to receive or return all or part of the applicable merchandise at Seller's sole cost and expense including any transportation, handling and storage charges without Seller's authorization and in Buyer's sole and absolute discretion in the event of any of the following, each of which will substantially impair the value of the whole purchase order to Buyer:
- (i) any breach of Seller's representations and/or warranties hereunder;
 - (ii) any delay in delivery or performance or departure from delivery and routing instructions;
 - (iii) any variation from or non-compliance with the quantities, quality, specifications, merchandise samples, assortment, prices, services or other terms and conditions specified in the purchase order, including if the merchandise is defective, deficient, not of merchantable quality or is otherwise not fit for Buyer's purposes, or if the merchandise is shipped contrary to Buyer's instructions or not in compliance with the terms of a purchase order (including if it is received before or after the specified delivery dates and times) or not shipped in containers or with labels, bar codes and the like conforming to Buyer's specifications (or in the absence of such specifications, in recognized standard containers conforming to carriers' specifications);
 - (iv) if the merchandise is not packaged, tagged, labeled, invoiced or stamped in compliance with any Canadian federal, provincial, territorial or local law, rule or regulation;
 - (v) any breach of Seller's obligations or Seller's failure to comply with the terms and conditions hereunder;
 - (vi) delivery of the merchandise does not comply with the receiving procedures of Buyer or its agents or carriers, as applicable;
 - (vii) the merchandise becomes the subject of any claim by any third party (including that the sale, offer or use of the merchandise infringes or would infringe any patent, trademark, copyright or alleged intellectual property right of any third party) or allegedly involves any unfair competition;
 - (viii) the merchandise is manufactured to be sold to Buyer in violation of any applicable statute, ordinance or administrative order, rule or regulation, or if Seller refuses to furnish appropriate guaranties to protect Buyer as permitted by any law, rule or regulation;
 - (ix) Seller becomes insolvent or is subject to any proceeding or takes any action with respect to bankruptcy, insolvency or relief from creditors (including if Seller makes an assignment for the benefit of a creditor or a receiver for Seller's assets

or business is appointed), or Buyer reasonably believes Seller may become insolvent or subject to bankruptcy or receivership proceedings;

- (x) Seller takes any action or fails to act and in the reasonable opinion of Buyer, Buyer's reputation may be adversely affected by such action or failure to act; in the event Industry Canada or other federal, provincial or local agency or any other governmental or quasi-governmental authority having jurisdiction issued an order pursuant to any consumer protection legislation requiring either Buyer or Seller to recall, replace, repay or make refunds with respect to all or part of the merchandise supplied by Seller to Buyer; or
- (xi) a discontinuance of or substantial interference with Buyer's business has occurred, in whole or in part, including as a result of acts of God (including, but not limited to, natural disasters, fire, flood, earthquake, and disease outbreaks), lock out, strike, war, civil commotion or disturbances, acts of public enemies, government restrictions, riots, insurrections, sabotage, blockage, embargo, or other causes beyond Buyer's reasonable control.

In the circumstances described in clause (xi) immediately above, Seller shall immediately stop all work and observe any instruction from Buyer as to work in process.

- (b) Buyer may charge to Seller all expense of unpacking, examining, repacking, storing and re shipping of any merchandise rejected as aforesaid. Buyer's right to reject and return or hold merchandise at Seller's expense and risk shall, without limiting such right, extend to merchandise sold to Buyer hereunder which is returned by Buyer's customers for any reason entitling Buyer to reject.
- (c) Buyer may, at its option, require Seller to grant a full refund or credit to Buyer, in lieu of replacement, with respect to any item which Buyer is entitled to reject hereunder.
- (d) Buyer has the right from time to time, to set off or deduct against payment obligations by Buyer to Seller (i) any amounts owed by Seller or any affiliate of Seller to Buyer or to any affiliate of Buyer, (ii) any amounts that may be owing by Seller to a manufacturer or supplier of packaging components or elements or ingredients of merchandise if such supply is arranged or mandated by Buyer; and Buyer has the right to reduce future payments by an amount equal to the Buyer's prior payment for returned or non-conforming merchandise; and the foregoing rights shall survive and not be abrogated, notwithstanding any assignment or other conveyance by Seller of its accounts receivable.
- (e) The return of any merchandise shall not relieve Seller from liability for failure to conform to the terms of the Contract (including the purchase order and/or Terms), or for liability with respect to representations, warranties or covenants, whether express or implied. Failure of Buyer to state a particular defect or procedural violation upon rejection shall not preclude Buyer from relying on unstated defects or procedural violations to justify rejection or establish breach.
- (f) Buyer may also cancel the purchase order in whole or in part without cause at any time. In the event of such cancellation without cause, Buyer's liability to Seller shall be limited to the contract price of that portion of the purchase order fully and properly performed by Seller and received by Buyer prior to such cancellation.

18. LIMITATION OF BUYER'S LIABILITY

- (a) IN NO EVENT SHALL BUYER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, ECONOMIC, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND BUSINESS INTERRUPTION, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE) ARISING OUT OF OR RELATED TO THE BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF SELLER HAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

19. PROPRIETARY INFORMATION

- (a) All Proprietary Information (as hereinafter defined) to which Seller gains access from Buyer is confidential and Buyer's sole and exclusive property. Seller shall not in any manner use, reproduce or disclose, directly or indirectly, to any of Seller's employees, agents, affiliates, subcontractors, suppliers or any third party at any time any Proprietary Information except in connection with Seller's performance under a purchase order and then only to the minimum extent necessary to allow such performance.
- (b) Seller may disclose Buyer's Proprietary Information to the extent required by law after giving Buyer as much notice of the legal requirement to disclose as is consistent with the legal requirement and after cooperating reasonably with Buyer's efforts to obtain a protective order or such other confidential treatment as may be legally available to Buyer for such information.

20. DEFINITIONS AND INTERPRETATION

- (a) The headings in these Terms and their divisions into Sections, Subsections and/or paragraphs are for convenience of reference only and do not affect to scope of, intent or interpretation of any provision thereof.
- (b) The term "**affiliate**", with respect to a person, means by any person or entity controlling, controlled by or under common control with such person.
- (c) The term "**merchandise**" as used herein shall include the product(s) sold by Seller to Buyer and all packaging and containers employed in connection therewith and any literature pertaining to such merchandise.
- (d) The term "**specification**" as used herein shall mean all, or any part of, the detailed description of merchandise as set out in a purchase order or otherwise agreed upon by Seller and Buyer in writing; any generally recognized standards in connection with merchandise; and/or any samples of the merchandise provided to and approved by Buyer. By agreeing to and using any such specification or any design, product, modification or other manufacturing or product suggestion, whether originating with Buyer or otherwise, Seller agrees that it adopts as its own, accepts full responsibility for, and relieves Buyer of all responsibility for such specification, design, modification or suggestion.
- (e) "**Proprietary Information**" includes: (a) all information relating to Buyer's sales, pricing, costs, inventory, operations, plans, programs, merchandise, and all information related to merchandise purchases, including, but not limited to shipment and transportation thereof and reports relating thereto; (b) all of Buyer's trade secrets

including any and all customer lists, customer survey responses, and any other information concerning of Buyer's customers; (c) specifications to the extent furnished by Buyer; and (d) any other information provided by Buyer to Seller that is not publicly available. Proprietary Information does not include: (a) any information that is publicly available, unless it became so by disclosure not in violation of these Terms, or (b) any information available to Seller from a source other than Buyer which is not subject to a contractual or other disclosure restriction.

21. MISCELLANEOUS

- (a) All rights and remedies under the Contract 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 herein or by law.
- (b) Seller agrees to sign and deliver such further documents and do such other things as are reasonably necessary to fulfill the terms of the Contract (including these Terms).
- (c) Seller shall not 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 Buyer without Buyer's prior written consent. No assignment or delegation (including assignment of the right to receive payment), with or without notice, shall bar Buyer from asserting against Seller or the transferee or both any claim against Seller whether or not arising out of the purchase order and whether or not accrued at the time of assignment or delegation. Any adjustments made with Seller or returns made to Seller for credit shall be binding upon Seller and any assignee or delegate. If Seller makes any assignment or delegation in violation of the foregoing, in addition to our other rights and remedies available under the purchase order, at law or in equity, Buyer may cancel the undelivered balance of the purchase order without liability to Buyer except for merchandise previously accepted.
- (d) Time is of the essence of this Contract.
- (e) The Contract (including these Terms) shall not be modified or amended by course of dealing or performance or by any subsequent communication except one in writing, specifically referring to these Terms and indicating an explicit intent to modify them, signed by an authorized representative of Buyer.
- (f) The waiver by Buyer of strict compliance with, or performance of any of, the terms and conditions hereof or any breach hereof on the part of Seller shall not be deemed to be a waiver of any subsequent failure to comply strictly with, or perform, the same or any other term or condition of the Contract (including these Terms) or of any breach thereof.
- (g) The Seller and Buyer are independent contractors engaged in the operations of their respective businesses, and neither is (or is to be considered) the agent or employee of the other for any purpose whatsoever. Neither Seller nor Buyer has the authority to enter into contracts or assume any obligations for the other, or make any representations or warranties on behalf of the other. Nothing in these Terms or otherwise in the Contract shall be construed to establish a relationship of co-partners or joint venture between Seller and Buyer.

- (h) If any provision or part of a provision contained in the Contract is held by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, the remaining provisions of the Contract will remain in full force and effect.
- (i) No provision of the Contract (including these Terms) may be construed against Buyer as the drafting party.
- (j) This Contract shall be governed by the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without reference to its conflicts of laws rules. The parties agree that the non-exclusive venue for all disputes between the parties will be the courts of Ontario, in the judicial district of Toronto, Ontario, to which jurisdiction Seller irrevocably submits and waives any objection or defense that Seller is not subject to the jurisdiction of the courts of Ontario, that the venue of the action is improper and that the action, suit or proceeding is brought in an inconvenient forum.