



TERMS AND CONDITIONS OF PURCHASE

Vendor Name: _____

Vendor Number: _____

These Terms and Conditions of Purchase (“Terms and Conditions”) apply to any offers to purchase and actual purchases by Hamrick’s Inc., its subsidiaries, affiliates, successors and assigns (“Hamrick’s”) of any goods and/or services (“Merchandise”) described in any Purchase Order (“PO”) submitted by Hamrick’s to the Vendor named above (“Vendor”). Any PO submitted by Hamrick’s to Vendor is an offer to purchase the Merchandise described in such PO and acceptance of such offer is expressly limited to the terms of such PO and these Terms and Conditions. The acceptance by Vendor of any PO, whether such acceptance is delivered by hand, mail, text, internet, facsimile or electronic mail, recognizes the existence of a contract for such Merchandise, and Vendor shall abide by the terms of such PO, and these Terms and Conditions together with any written agreement signed by both parties related to the purchase of Merchandise, which constitute the sole and entire agreement of the parties with respect to such contract and may be modified only in a writing signed by Hamrick’s authorized representative. Hamrick’s hereby objects to and rejects any terms proposed in any quotation, confirmation, acknowledgement, invoice or other forms of correspondence supplied by Vendor and any terms supplied by any trade usages or course of dealing which add to, vary from, or conflict with the terms of the applicable PO or these Terms and Conditions (which additional, varying or conflicting terms are hereby expressly excluded from the contract).

Change/Cancel Order - Hamrick’s may make changes to any PO provided Vendor is notified before the start ship date. Should Vendor not comply with change order, Vendor must notify Hamrick’s immediately, and Hamrick’s has a right to cancel such PO with no further liability or obligation. Hamrick’s has a right to cancel any PO for any reason, in their own discretion, with no further liability or obligation, provided Vendor is notified before the start ship date.

Price Warranty- Vendor warrants that the prices for the Merchandise sold to Hamrick’s hereunder are not less favorable than those currently extended to any other customer of Vendor for the same or similar goods in similar quantities. In the event Vendor reduces its price for Merchandise during the term of any PO, Vendor agrees to unilaterally, on its own initiative, reduce the prices of such PO correspondingly. Vendor warrants that prices shown on any PO shall be complete, and no additional charges of any type shall be added without Hamrick’s express written consent. Such additional charges include, but are not limited to, shipping, packaging, labeling, customs duties, taxes, storage, insurance and pallets.

Delivery- Vendor shall deliver the Merchandise in the quantities and on the date(s) specified in each PO or as otherwise agreed in writing by the parties. Timely delivery of the Merchandise is of the essence in regards to each PO. If the delivery of any Merchandise is not completed by the time specified on any PO or Merchandise ships past the cancel date, Hamrick’s reserves the right without liability, in addition to its other rights and remedies, to terminate the applicable contract and/or refuse the order at time of delivery. Should the Merchandise ship past cancel and Hamrick’s refuses the shipment, the Merchandise will be returned to Vendor and incoming and return freight charges will be billed to Vendor.

Warranties- Vendor expressly warrants that Vendor is authorized to sell the Merchandise and that all Merchandise furnished pursuant to any contract resulting from any PO shall: (i) be merchantable; (ii) conform to all specifications, samples and other requirements specified by Hamrick’s; (iii) conform with all applicable laws, regulations and standards; (iv) be new, not used, refurbished or reconstituted; (v) be original and authentic and will not include any counterfeit, fake or otherwise fraudulent goods or services; (vi) be free from defects in design, material and workmanship; (vii) conform to any statements made on the containers, labels or advertisements for such Merchandise; (viii) be adequately contained, packaged, marked and labeled; (ix) be fit, safe and appropriate for the purpose for which goods and services of that kind are normally used; and (x) be free and clear of all liens, security interests or other encumbrances. Vendor further expressly warrants that it has good title and authority to transfer title to the Merchandise covered by any PO. Vendor further expressly warrants that all Merchandise furnished pursuant to any contract resulting from any PO, and the distribution, sale and use of such Merchandise, will not infringe upon or misappropriate any patent, trademark, copyright or other intellectual property rights of any party in any jurisdiction. These warranties survive any delivery, inspection, acceptance or payment of or for the Merchandise by Hamrick’s. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Hamrick’s discovery of the noncompliance of the Merchandise with the foregoing warranties. If Hamrick’s gives Vendor notice of noncompliance with this warranty provision, Vendor shall, at its own cost and expense, promptly refund Hamrick’s cost for the defective or nonconforming

Merchandise and pay for all related expenses, including, but not limited to, transportation charges for incoming and return of the defective or nonconforming Merchandise to Vendor and handling/violation charges.

General Indemnification- Vendor shall, at its expense, defend (by counsel acceptable to Hamrick's), indemnify and hold harmless Hamrick's, its related and affiliated companies, and all their respective officers, directors, employees, successors, assigns, agents and customers (collectively the "Indemnitees"), from and against all claims, suits, criminal charges, damages, losses, royalties, profits, costs and expenses incurred or awarded (including reasonable attorney and professional fees and costs), the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the Merchandise purchased from Vendor or Vendor's negligence, willful misconduct or breach of any contract or of these Terms and Conditions. Vendor shall not enter into any settlement without Hamrick's or Indemnitee's prior written consent.

Intellectual Property Indemnification- Vendor shall, at its expense, defend (by counsel acceptable to Hamrick's), indemnify and hold harmless Hamrick's and any Indemnitee from and against any and all Losses arising out of or in connection with any suit, claim or action for actual or alleged direct or contributory infringement of or inducement to infringe, and United States or foreign patent, trademark, copyright, trade secret or other intellectual property right by reason of the manufacture, use or sale of the Merchandise ordered. Vendor shall not enter into any settlement without Hamrick's or Indemnitee's prior written consent.

Inspection and Rejection of Nonconforming Merchandise- Hamrick's has the right to inspect the Merchandise on or after the delivery date. Hamrick's, at its sole option, may inspect all or a sample of the Merchandise, and may reject all or any portion of the Merchandise if it determines any Merchandise is nonconforming or defective. If Hamrick's rejects any portion of the Merchandise, Hamrick's has the right, effective upon written notice to Vendor, to: (a) rescind the applicable contract in its entirety; (b) accept the Merchandise at a reasonably reduced price; or (c) reject the Merchandise. If Hamrick's rejects the Merchandise, Vendor shall, at its expense, promptly refund the cost the nonconforming Merchandise and pay for all related expenses, including, but not limited to, transportation charges for incoming and return of the defective or nonconforming Merchandise and handling/violation charges. Any inspection or other action by Hamrick's under this provision shall not reduce or otherwise affect Vendor's obligations under the applicable contract, and Hamrick's shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

Product Liability Insurance- Vendor agrees that for a period of at least three (3) years following Vendor's last delivery of Merchandise to Hamrick's, Vendor shall, at its own expense, maintain and carry insurance in full force and effect which insures, but is not limited to, commercial general liability (including product liability) insurance in such amounts and with such coverages as standard in the industry with financially sound and reputable insurers.

Compliance with Laws, Regulations and Industry Standards – Vendor shall comply with all applicable federal, national, state and provincial laws and regulations in effect at the time of shipment of Merchandise or performance of services.

Payment – Payment shall be made in accordance with the terms agreed upon on the Vendor Information sheet and Vendor Agreement form. Discount period, if any, will begin on the receipt date of Merchandise at destination, unless expressly stated otherwise. In the absence of specific payment terms, invoices will be paid on a net sixty (60) days basis.

Setoff - All claims or rights by Vendor for money due, or to become due, from Hamrick's shall be subject to deduction or setoff by Hamrick's by reason of any sums owed or payable to Hamrick's (including, but not limited to shortages, returns, credits, violations and chargebacks) due to Vendor's obligations or breach under any contract or as otherwise provided in any contract that arises out of this or any other transaction with Vendor and/or setoffs may be enforced as provided in Hamrick's Packing/Routing/Invoicing Requirements.

No Waiver – Any failure or delay by Hamrick's in exercising any right, privilege or remedy under (or insisting on Vendor's full performance of) any or all of the terms and conditions hereunder or that is available at law or in equity shall not operate as a waiver thereof, not shall any partial exercise thereof preclude any other or future full exercise thereof. Further, any actual waiver by Hamrick's of any condition, term, right, privilege or remedy hereunder that is otherwise available at law or equity shall not operate as a waiver thereof or establish a course of conduct for future POs.

Limitation on Hamrick's Liability – **IN NO EVENT SHALL HAMRICK'S BE LIABLE FOR ANTICIPATED PROFITS, FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR FOR PUNITIVE OR EXEMPLARY DAMAGES.** Hamrick's liability on any claim of any kind for any loss or damages arising out of connection with or resulting from any PO or from the performance or breach thereof shall in no case exceed the price allocable to the Merchandise or unit thereof which gives rise to the claim. Hamrick's shall not be liable for penalties of any description. Nothing in any contract or otherwise shall exclude or limit (a) Vendor's liability under the Warranties, General Indemnification, Intellectual Property Indemnification or Confidential Information provisions contained herein, or (b) Vendor's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

Assignment- Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under any PO without the prior written consent of Hamrick's. Any purported assignment or delegation in violation of this provision shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder. Hamrick's may at any time assign, transfer or subcontract any or all of its rights or obligations under any PO without Vendor's prior written consent.

Relationship of the Parties- The relationship between the parties is that of independent contractors. Nothing contained in any PO shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from any PO.

Severability- If any term or provision of any PO is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the applicable contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

Governing Law- All matters arising out of or relating to any contract formed by Vendor's acceptance of a PO shall be governed by and construed in accordance with the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule (whether of the State of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of South Carolina.

Submission to Jurisdiction- Any legal suit, action or proceeding arising out of or relating to any contract formed by Vendor's acceptance of a PO shall be instituted in the federal courts of the United States of America or the courts of the State of South Carolina in each case located in the City of Spartanburg and County of Spartanburg, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

Each party hereby acknowledges and agrees to these Terms and Conditions. Each undersigned individual signing on behalf of each party warrants that he/she is an authorized representative of such party.

_____ (Vendor Name)

Hamrick's Inc.

By: _____ (Signature)

By: _____ (Signature)

Name: _____ (Print)

Name: _____ (Print)

Title: _____

Title: _____

Date: _____

Date: _____