

**All purchase orders issued by WINN-DIXIE STORES, INC and its subsidiaries ("Buyer") are subject to these terms and conditions:**

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As used herein, the term "Buyer" means Winn-Dixie Stores, Inc. and its affiliates. As used herein, the term "goods" refers to all materials, supplies, equipment, parts, accessories, ingredients, packaging, or other items to be sold to Buyer hereunder, and unless the context otherwise requires, also includes installation and other services related to the goods which Supplier may agree to provide. As used herein, the term "services" refers to all services of any nature whatsoever ordered or required by Buyer.

**1. Acceptance; Applicable Terms and Conditions of Purchase.**

(a) Upon receipt by Buyer of an express acceptance by Supplier or upon the commencement of performance by Supplier, a Purchase Order ("the PO") becomes a contract with the terms and conditions herein set forth.

(b) Acceptance of the PO is expressly limited to the terms and conditions herein. Buyer will not be bound by any provisions in Supplier's order acknowledgment or acceptance forms or other documents (including counter offers) which propose any terms or conditions differing with the terms and conditions set forth herein, and any such terms and conditions of Supplier will have no force or effect and will not constitute any part of the terms and conditions of purchase. Buyer's failure to object to provisions contained in Supplier's documents is not deemed to be a waiver of the terms and conditions set forth herein, which constitutes the entire agreement between the parties;

(c) No amendment, deletion, supplement or change in terms and conditions contained herein will be binding on Buyer unless, approved in writing by Buyer.

**2. Price.**

(a) Prices are firm and are not subject to adjustment or variation unless specifically approved in writing by Buyer.

(b) The prices on the PO include all costs and charges to be incurred by Supplier, including, without limitation, installation, and other service charges, all applicable federal, state and local taxes and duties, all wages and fees for services and goods, all charges for transportation, packing, packaging and returnable containers, all costs of design, engineering, and development, and all costs for tooling, gauges, jigs, fixtures, dies, molds, patterns, and similar property that may be obtained or required by Supplier for use in the manufacture, fabrication, or assembly of the goods or performance of the services called for by the PO.

**3. Payment Terms.**

Unless otherwise stated on the face of the purchase order, the payment terms are net 45 days after receipt of the goods (including all documents required in this PO), or performance of the services, and verification that the quality of goods or services received meets Buyer's specifications, and the receipt of a correct invoice unless set forth differently on the PO and agreed to in writing by both parties. If Supplier fails to ship the goods or perform the services in accordance with the schedule stipulated in this PO, Buyer may delay payment, equal to the number of

days the goods were delayed by the Supplier, as an equitable adjustment. Buyer is entitled at all times to set off any amount owing at any time from Supplier or any of its affiliates to Buyer.

**4. Specifications.**

(a) Unless otherwise authorized in writing by Buyer, Supplier will deliver goods or render services, or both, per all specifications, designs, drawings and performance criteria, if any, furnished by Buyer without variation.

(b) Buyer may, in a writing, change any one or more of the following terms of the PO: (i) the specifications, designs, drawings or performance criteria; (ii) method of shipping or packing; (iii) place of inspection, acceptance or point of delivery; (iv) delivery schedule; and, (v) quantity. In this event and if appropriate, either Buyer or Supplier may request in writing an equitable adjustment in the prices or delivery terms of the PO, and Supplier may make a claim in writing for the cost of any redundant material or work in process, but not for any cost of design, engineering or development, special tooling or general purpose equipment unless such items have been specifically ordered and separately priced in the PO. Any and all claims and requests by Supplier under this subsection (b) will be deemed waived unless made in writing and received by Buyer within twenty (20) days from the receipt by Supplier of the written order for change in the PO.

**5. Assurance of Performance.**

In the event Supplier fails to perform when due any delivery and/or service required by the PO or Buyer in good faith has any other reason to question the Supplier's intent and ability to perform, Buyer may at its election demand adequate assurance of performance, including that Supplier furnish a performance bond or letter of credit, conditioned to indemnify Buyer for any loss Buyer may sustain by failure of Supplier to perform its obligations. In the event Supplier fails to comply with such demand within ten (10) days thereafter, Buyer may treat this failure as a default under the PO.

**6. Termination.**

(a) The PO may be terminated by Buyer, (i) promptly upon written notice to Supplier for the convenience of Buyer, or (ii) at any time if Supplier is in default under the PO, or (iii) at any time upon the insolvency of Supplier or in the event of the institution of any proceeding by or against Supplier in bankruptcy or insolvency or under any provisions of the Bankruptcy Act or for the appointment of a receiver or trustee or any assignment for the benefit of creditors of Supplier. Any termination pursuant to part (iii) of this subsection (a) is deemed to be a termination for default,

(b) In the event of termination for the convenience of Buyer, Supplier may in writing make a claim for the cost of any work or service, or both, in process or completed but not paid for, or for goods shipped, if not later found to be defective, but not for any cost of design, engineering, or development, special tooling or general purpose equipment unless

such items have been specifically ordered and separately priced in the PO. Other than as specified in the preceding sentence, Supplier will not be entitled to any claim, remedy or damages from Buyer. Any and all claims or requests by Supplier under this subsection (b) are deemed waived unless made in writing and received by Buyer within twenty (20) days from the date of termination. (c) In the event of termination by Buyer pursuant to (ii) or (iii) of subsection (a) above, Supplier is not entitled to a claim for damages or for the cost of any work or service, or both, in process.

#### **7. Warranties.**

Supplier warrants and represents to Buyer that:

(a) all goods are free from defects, merchantable, fit for their intended use, materially conform to samples which were provided to Buyer, comply with all federal, state and local laws, legally applicable treaties, regulations, ordinances specifications, guidelines and standards, whether voluntary or mandatory, and have obtained the necessary approvals and certification(s) for providing such goods or services;

(b) the services provided to Buyer will be on a best efforts basis in a timely, professional and workmanlike manner and with the degree of care and expertise as is standard for the provision of such services in accordance with industry practices.

(c) all goods and services furnished will be as represented by Supplier, suitable for Buyer's business purposes and in conformance with any performance criteria provided to Supplier.

(d) all goods and services purchased by Buyer conform to Buyer's requirements;

(e) it is not utilizing child or illegal immigrant labor, paying unreasonably low wages or maintaining unsafe working conditions with respect to the goods or services and that to its best information and belief its third party subcontractors are not utilizing child labor, paying unreasonably low wages or maintaining unsafe working conditions with respect to the goods or services;

(f) It has the right to enter into and fully perform this Agreement, and no service, equipment, or materials or reports furnished to Buyer will in any way infringe upon or violate any applicable law, rule or regulation, any contract with third party or any rights of any third party, including without limitation, rights of patent, trade secret, trademark or copyrights;

(g) It has the experience and abilities necessary to perform all required services with a high standard of quality;

(h) With respect to all individuals Supplier uses to perform the services required under this PO, Supplier will make all appropriate tax payments and tax withholdings and has verified that such individuals are legally able to work in the United States and that to its best information and belief, its third party subcontractors are making all appropriate tax payments and tax withholdings and has verified that such individuals are legally able to work in the United States.

#### **8. Packaging and Shipping; Risk of Loss.**

(a) All packing and packaging must be in accordance with specific instructions from Buyer on the PO hereof or in separate notification. In the absence of specific instructions, all packing and packaging must comply with good commercial practice and applicable carrier's tariffs, and will consist of suitable containers for optimum protection of the goods and for in-plant handling and storage.

(b) Delivery must be made by the carrier and route specified by Buyer. In the absence of instructions, shipments must be routed via most economical mode of commercially reasonable transportation available consistent with this PO.

(c) The PO number and Serial Number, if applicable, must be shown on all packing slips and invoices and; except in the case of ingredients, on all packages, crates, or other containers, together with the destination party and address specified by Buyer.

(d) If invoices are subject to discount for early payment, Supplier will state such terms clearly on such invoices. Buyer's opportunity for early payment will not be prejudiced by delays beyond Buyer's control.

(e) Delivery is not deemed to be complete until the goods or services have actually been received and accepted by Buyer, or by the person to whom the goods or services were delivered, and the risk of loss on the goods will be borne by Supplier until such delivery and acceptance.

#### **9. Delivery or Performance Schedule; Quantities.**

(a) Time is of the essence.

(b) Buyer may exercise any of the following rights with respect to non-conforming goods or services delivered by Supplier: (a) refuse to accept delivery of any of the goods or performance of the services, (b) accept the entire shipment or installment of goods or the services performed; (c) accept any number of commercial units (i.e., a portion of the goods that can be used by Buyer) or accept any portion of the services rendered, and reject the balance of the shipment, installment or services; (d) return to Supplier any goods already accepted and recover from Supplier all payments made therefore and for freight, storage, handling and other expenses, including services, incurred by Buyer and be relieved from liability for any future payments to Supplier, (e) recover any advance payments to Supplier for undelivered or returned goods, or services to be performed, and, (f) purchase goods or services elsewhere and require Supplier to immediately reimburse Buyer for any resulting losses, including price differentials for substitute goods or services.

(c) Buyer may cancel the entire PO including, without limitation, for failure of Supplier to deliver the goods or perform services when due, delivery of defective or otherwise nonconforming goods, delivery of an insufficient quantity of goods, or defective or incomplete performance of services. (d) Supplier must promptly advise Buyer of any delay or anticipated delay in delivery or performance. (e) Supplier can not, without Buyer's prior written consent, manufacture or procure materials in advance of Supplier's normal flow time or deliver

goods or perform services in advance of schedule. In the event of termination or change in the terms of the PO, no claim by Supplier will be allowed for any such manufacture of goods or procurement of performance of services in advance of such normal flow time without the prior written consent of Buyer. (f) Unless specified otherwise, the PO is not deemed to be separable as to the goods and services provided herein. (g) Any shipments which are sent C.O.D. without Buyer's written consent will not be accepted and are made and shipped at Supplier's risk.

**10. Inspection.**

All goods and services are subject to inspection and rejection by Buyer at any time, notwithstanding any prior payment or inspection. Without limiting any of the rights it may have, Buyer at its option may require Supplier, at Supplier's expense (i) promptly to repair or replace any or all rejected goods, or to cure or re-perform any or all rejected services, or (ii) to refund the price of any or all rejected goods or services. All such rejected goods will be held for Supplier's prompt instruction and at Supplier's risk.

**11. Quality Assurance.**

Upon receipt by Buyer of an express acceptance by Supplier or upon the commencement of performance by Supplier, Supplier has agreed to provide goods or services in accordance with Buyer's quality assurance standards, which are incorporated herewith:

(a) Buyer reserves the right to terminate future purchases from Supplier based on substandard quality of goods or services, sub-standard Supplier plant or location conditions, repeated recalls or consumer complaints, or upon the sale, disposition or closure of a facility affiliated with the goods or services under this PO. Any such recalls, multiple consumer complaints, or failure to comply with Buyer standards will render the Supplier an "unapproved" status and Supplier must immediately pay an administrative fee of \$2500 to cover Buyer's related expenses;

**12. Force Majeure.**

If the obligations of either of the parties to the PO are subject to any delays or non-performance due to any cause beyond its reasonable control, including fire, explosion, flood or other acts of God, war or civil commotion, strike, lock-out or labor disturbances, acts, regulations or laws of any government; or failure of public utilities or common carriers, there is no liability for failure to perform.

(a) In the event of such a non-performance or delay in performance by Supplier, Buyer may at its option (i) reject any partial or future performance by Supplier upon giving reasonable notice in writing to Supplier, and the PO will thereupon be terminated and neither party will be liable to the other hereunder, or (ii) in time of shortage of goods or inability to perform services, Supplier agrees to allocate goods or services among its existing regular customers in such a commercially reasonable manner as Supplier determines after supplying its own internal requirements

**13. Confidentiality.**

(a) Supplier shall neither disclose, advertise, nor publish the fact that Supplier has contracted to furnish Buyer the goods or services described herein, nor disclose any details connected with this PO to a third party.

(b) Neither party may disclose, reveal, divulge, use or by whatever means make available, except as required to perform its obligations pursuant to the PO, information of the other party which was denominated or marked as "confidential" at the time of disclosure or confirmed in writing as "confidential" within thirty (30) days from an oral disclosure obtained from the other party during the term of the PO and for a period of three (3) years after the PO expires or is terminated for any reason without prior written permission from the other party.

(c) The terms and conditions of the PO, as well as any formulae, processes, guidelines, specifications, standards, marketing plans currently or previously disclosed to the receiving party comprises confidential information of the respective party. Subject to all the terms and conditions of this Article, access to the confidential information of each party is to be restricted to key personnel on a need-to-know basis only.

**14. Responsibility for Property.**

Any materials, items or equipment (including, but not limited to, for purposes of this Section, all tools, dies, mechanicals, negatives, plates, drawings, sketches, and artwork) furnished, funded or paid for by Buyer, provided or made available to Supplier by Buyer in connection with the PO, will be deemed as held by Supplier upon consignment. All such materials, items and equipment not used in the manufacture of the goods covered by the PO will, as directed, be returned to Buyer at Buyer's expense, and, if not accounted for or so returned, will be paid for by Supplier.

**15. Insurance.**

Supplier agrees to maintain general liability coverage with no less than an A-rated carrier with minimum limits of liability of \$2,000,000.00.

(a) Before Supplier performs any services, ships any goods, or commences any work on Buyer's premises, Supplier must name Buyer as an additional named insured and certificate holder on all coverages and send such certificate of insurance to: Winn-Dixie Risk Management, 5050 Edgewood Court, Jacksonville, FL 32256.

(1) Coverages required for a Supplier providing goods to Buyer are: Product Liability, Operations, Contractual, Independent Contractors, Broad Form Property Damage, Personal Injury, Auto Liability, and Statutory Workers Compensation Insurance that complies with the laws of each state where Supplier's employees will be working;

(2) Coverages required for a Supplier providing a service to Buyer are: Premises/Operations; Underground, Explosion and Collapse; Products/Completed Operations; Contractual; Independent Contractors; broad Form Property Damage; Personal Injury; Auto Liability; and

Statutory Workers Compensation Insurance that complies with the laws of each state where Supplier's employees will be working;

(3) Such certificate of insurance must provide for 30 days notice to Buyer prior to policy cancellation and must be updated as required by policy changes.

**16. Indemnification.**

Supplier agrees to indemnify Buyer and its customers and hold them harmless from any breach or violation of any warranty, guarantee, representation, term or condition of this PO and to bear full responsibility and liability for all expenses arising from any breaches of warranties in Section 7 above, failures to comply with any Buyer quality assurance guidelines or standards and from third party complaints, claims, or legal actions.

(a) This indemnification includes expenses of investigation, litigation (including witness and attorney's fees), collection of amounts (including costs and expenses) owed to Buyer, and all actions by Buyer against Supplier to enforce compliance with this Agreement, settlement and/or payment of judgment and any third party claims, demands, suits and causes of action, including but not limited to, consumer complaints, claims or legal actions alleging property damage, personal injury, infliction of emotional distress, illness, death or other injury to person or property:

(b) In the case of a Supplier providing goods, this obligation results from or arises out of or in connection with the purchase, sale and/or use of goods, whether packed for, shipped to, sold to or delivered to Buyer by the Supplier;

(c) In the case of a Supplier providing a service, this obligation results from or arises out of or in connection with any presence or activity of service Supplier, on premises owned or operated by Buyer, including the use of any equipment by service Supplier on such premises, whether the equipment or materials belong to service Supplier, Buyer, or otherwise.

**17. Limitation of Liability.**

Neither party will be liable to the other for incidental, consequential, exemplary, special or punitive damages even if the claiming party has been advised of such damages prior to their incurrance, and whether or not such claim is based upon theories of contract, negligence, strict liability, tort or otherwise.

**18. Work on Premises.**

If Supplier's performance under this PO involves operations by Supplier on the premises of Buyer or one of its customers, Supplier will comply with all applicable provisions of federal, state and local laws and regulations including rules, safety requirements and regulations established for such premises. Supplier will take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such performance. Supplier will indemnify Buyer and its customers against all loss, which may result from any act or omission of Supplier, its agents, employees, or sub-contractors.

**19. Paid Stock.**

Any goods for which Buyer has paid Supplier but which have not been delivered to Buyer or shipped pursuant to Buyer's instructions will constitute "paid stock" of Buyer. Paid stock must not be commingled or stored with Supplier's own inventory of goods for customers other than Buyer and must be physically separated from Supplier's inventory in an area designated by prominent signs, and markings which identify the paid stock stored within the warehouse area as the sole property of Buyer.

(a) Supplier bears all risks of loss, injury or destruction to the paid stock while it is warehoused with Supplier.

(b) Supplier will not sell, lease, assign, transfer, pledge, hypothecate or otherwise encumber, except as specifically permitted in writing by Buyer, any paid stock warehoused with Supplier or any interest therein. In addition, Supplier will execute such financing statements, security documents and other instruments as Buyer deems appropriate to protect Buyer's ownership of the paid stock against claims of creditors of Supplier and other third persons. Supplier will and does hereby indemnify and hold harmless Buyer from and against the payment of any sum of money and against any expenses whatsoever, including attorney's fees and court costs, which Buyer may be called upon to pay or incur resulting from any loss or damage to the goods while warehoused with Supplier or resulting from a creditor's or other third party's claim of interest, lien or right in or to any paid stock warehoused with Supplier.

**20. Sales and Distribution of Goods.**

In no event will Supplier sell or distribute in any manner whatsoever to persons other than Buyer or parties authorized in writing by Buyer, goods, supplies, materials or objects of any kind which are the property of Buyer or which are imprinted with or contain Buyer's trademarks or Buyer's artwork and designs, even if rejected by Buyer as nonconforming.

**21. Waiver.**

Buyer will not, by any act, delay, omission or otherwise, be deemed to have waived any of the rights or remedies under this PO, and no waiver whatsoever will be valid as against Buyer unless in writing, signed by an authorized representative of Buyer, and then only to the extent set forth therein. The failure by Buyer to enforce at any time, or for any period of time, any of the provisions hereof shall not be a waiver of such provisions nor the right of Buyer thereafter to enforce each and every such provision.

**22. Notice.**

Any notice or the like pursuant to the PO must be in writing and is deemed to have been sufficiently given if delivered in person, transmitted by facsimile, electronic computer mail or express delivery with fees prepaid, whether public or private carrier, addressed as set forth below or to such other persons and addresses as the parties may designate in writing from time to time.

**To Buyer:**

WINN-DIXIE Stores, Inc or its affiliates  
5050 Edgewood Court  
Jacksonville, Florida 32254  
ATTN: VP, Corp. Sourcing and Procurement  
Ph: 904/783-5000  
Fax: 904/370-6542

**With a copy to**

Office of General Counsel  
5050 Edgewood Court  
Jacksonville, FL 32254  
Ph: 904/783-5000  
Fax: 904/783-5651

**23. Counterparts.**

This PO may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument.

**24. Severability.**

Nothing contained herein shall be construed so as to require the commission of any acts contrary to law, and wherever there is a conflict between any provisions of this PO and any present or future statute, law, ordinance or regulation, the former shall be curtailed and limited only to the extent necessary to make it comply with such statute, law, ordinance or regulation.

**25. Subcontracting & Assignment.**

Except as to raw material purchases or standard commercial articles or parts, Supplier may not subcontract any portion of the work or the services without prior written consent of Buyer. Assignment of this PO or any interest herein or any payment due or to become due hereunder without the prior written consent of Buyer is void and of no effect, and may, at the option of Buyer, render this PO void.

**26. Remedies.**

Remedies herein reserved to Buyer are cumulative, and in addition to any other or further remedies provided in law or equity. In the event of any breach of this PO, Buyer may suffer irreparable harm and have no adequate remedy at law. In such event or the threat of any such event, Buyer will be entitled (in addition to any and all other remedies) to injunctive relief, specific performance and other equitable remedies without proof of monetary damages or the inadequacy of other remedies, and without necessity of posting a bond or other security. In addition, Supplier agrees to accept the actual value of liquidated damages assessed to Buyer by its customers for non-conformance to Buyer's customer specifications for product and service quality, packaging, labeling, performance, documentation, warranty, or delivery

(a) In the event any claim should be made against Buyer at any time during the continuance of the PO or any renewal thereof, that by virtue of its use or resale of the goods covered by the PO, or otherwise, that Buyer is infringing or contributing to the infringement of any actual or alleged industrial property rights, Buyer may at its option, thereupon or at any time during the continuance of such claim, refuse to accept deliveries hereunder

and terminate the PO and will, in such case, be entitled to the indemnity set forth in subsection (a) above.

(b) Supplier will not assert against Buyer or its customers any industrial property rights relating to the use or sale of goods or services related to the PO hereunder.

**27. Cooperation and Notice.**

Buyer and Supplier agree to cooperate fully with the other in the defense of any lawsuit, action, legal proceeding, claim or demand. Buyer agrees to notify Supplier of any lawsuit, action, legal proceeding, claim or demand, by certified mail, return receipt requested, or by hand delivery with appropriate receipt, or via e-mail or via any other means which provides confirmation of delivery of notice, and in no event shall such notice be later than thirty (30) days after receipt by, or knowledge by, Buyer provided, however that the failure to so notify Supplier will not relieve Supplier from liability unless, and only to the extent that, such failure to notify Supplier results in the forfeiture by the Supplier of rights and defenses otherwise available to Supplier with respect to such matter.

**28. Jurisdiction and Venue.**

This PO is governed by and construed in accordance with the laws of the State of Florida and in the event any suit, action or proceeding is brought by either party with respect to this Agreement or the matters contemplated herein, such action, suit or proceeding shall be brought in the United States District Court for the Middle District of Florida, Jacksonville Division, or any Florida state court located in Duval County, and both parties hereby accept, consent and submit to the exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding. Supplier expressly acknowledges and agrees that it is transacting business within the State of Florida and within Duval County, Florida. Both parties hereby irrevocably waive and release any claim, defense, motion or other assertion that any suit, action or proceeding brought in said court pursuant to this provision has been brought in an inconvenient forum.