



brands, inc.

7075 Flying Cloud Drive, Eden Prairie, MN 55344

TERMS AND CONDITIONS OF PURCHASE ORDER FOR ALL SUPPLIERS TO:

Appleseed's, Bedford Fair, Blair, Draper's & Damon's, Gold Violin, Haband, Norm Thompson, Old Pueblo Traders, Sahalie, The Tog Shop, and Wintersilks

The following terms and conditions are a part of the Purchase Order submitted by the Purchaser and are binding upon Seller.

1. **ACCEPTANCE.** Upon acceptance by Seller of this Purchase Order by (a) Seller's written acceptance, (b) Seller accepting any payment by reason of or relating to this Purchase Order, by way of deposit or otherwise, or (c) Seller's commencement of performance or shipment of Merchandise (as defined below) in connection hereunder, this Purchase Order shall constitute Seller's agreement to all of the terms and conditions set forth herein and in Purchaser's manuals and instructions which are incorporated herein by this reference and are identified on the website <http://orchardhomeservices.com/vendor-relations/> (the "Vendor Manuals"). The terms of the Vendor Manuals are in addition to, and not in lieu of, these Purchase Order Terms and Conditions. These Purchase Order Terms and Conditions and the Vendor Manuals may be modified by Purchaser at any time. Such modifications will be posted on <http://orchardhomeservices.com/vendor-relations/> or otherwise provided to Seller, and shall be binding upon the parties from the date of such posting or provision to Seller.

2. **NO ADDITIONAL TERMS. ACCEPTANCE BY SELLER IS LIMITED TO THE TERMS OF THE PURCHASE ORDER AND THESE TERMS AND CONDITIONS. PURCHASER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS IN SELLER'S ACCEPTANCE OR ANY OTHER DOCUMENT OR FORM TRANSMITTED ON BEHALF OF SELLER, UNLESS PURCHASER'S WRITTEN CONSENT IS FIRST OBTAINED. PURCHASER SHALL NOT BE DEEMED TO HAVE ACCEPTED ANY DIFFERENT OR ADDITIONAL TERMS BY ACCEPTANCE OF ANY MERCHANDISE OR PAYMENT OF ANY INVOICE.**

3. **CANCELLATION OF PURCHASE ORDER.** Purchaser may terminate and rescind all or part of this Purchase Order at any time in the event (a) Purchaser has any reasonable basis to believe that Seller will not perform its obligations under this Purchase Order (including, without limitation, timely delivery of all of the Merchandise); (b) Seller becomes insolvent or proceedings are instituted by or against Seller under any bankruptcy or insolvency laws; (c) Seller ceases its operations; or (d) any lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affects any or all of Purchaser's premises or business.

4. **RETURNS ALLOWANCE.** If Seller is shipping Merchandise to Purchaser or Purchaser's customers from a location in the United States of America, Seller agrees to a returns allowance discount of 1.5% for the categories of apparel (excluding footwear) and accessories and 3% for all other Merchandise categories including footwear (or such other amount as Seller and Purchaser may agree) to be applied against the cost of goods of such Merchandise on all invoices in lieu of Purchaser returning, in its sole discretion, any such Merchandise that is damaged, defective or non-compliant, or a combination thereof, including such Merchandise returned to Purchaser by its Customers ("Returns Allowance"). Any Merchandise not returned by Purchaser may be disposed of by Purchaser in its sole discretion.



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5. **IMPORT ADMINISTRATIVE FEE.** If Merchandise is directly imported by Purchaser from Seller to be sold as Purchaser's private label Merchandise and the Merchandise is shipping from a location outside the United States of America, Seller agrees to an import administrative fee discount of 1% for all Merchandise categories (or such other amount as Seller and Purchaser may agree) to be applied against the cost of goods of such Merchandise on all invoices.

6. **MERCHANDISE REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Purchaser, in addition to all warranties implied by law, that the Merchandise shipped under this Purchase Order together with all related packaging and labeling and other material furnished by Seller (collectively, the "Merchandise"), shall (a) be free from defects in design, workmanship and materials including, without limitation, such defects as could create a hazard to life or property; (b) not violate any applicable laws, regulations, orders or ordinances of the country of origin or of the United States or any state or any agency or political subdivision thereof; (c) be free and clear of all claims, liens and encumbrances upon payment of the purchase price; (d) conform to all of Purchaser's specifications and any approved samples; and (e) be merchantable at the time of delivery to Purchaser and at the time of use by Purchaser's customers.

Seller further warrants that the Merchandise shipped under this Purchase Order:

- a. does not and will not infringe or violate any intellectual property or other proprietary rights, including without limitation any patent, trademark, service mark, trade dress, trade name, copyright, trade secret, right of privacy, publicity or moral right, or utilize any manufacturing or administrative process that would infringe or violate any such right, and Seller has not received any notification of and has no knowledge of any basis upon which a third party could claim or contest the intellectual property in the Merchandise;
- b. is accurately labeled and clearly identifies the country of origin;
- c. is labeled in accordance with and complies in all respects with any and all applicable federal, state and local laws, regulations, orders and ordinances, including without limitation any applicable rules of the Federal Trade Commission, Food and Drug Administration, the Consumer Products Safety Commission and the Department of Health, Education and Welfare, including care labeling requirements, and the requirements of each of the following Acts to which it may be subject: The Federal Food, Drug and Cosmetic Act, the Wool Products Labeling Act, the Fair Packaging and Labeling Act, the Fur Products Labeling Act, the Textile Fiber Products Identification Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65);
- d. the fiber content of any textiles contained in the Merchandise is stated accurately on all tag, labels, invoices and other documents relating to the Merchandise;
- e. if the Merchandise is wearing apparel, that tests made under the procedures provided in the Flammable Fabrics Act and as referenced in the Vendor Manual show that the Merchandise is not so flammable as to be dangerous when worn by individuals; and
- f. is processed, packed and shipped in accordance with any of Purchaser's applicable supply chain security requirements related to the Customs-Trade Partnership Against Terrorism (C-TPAT), as defined in the Purchaser's Manuals (as applicable), as well as applicable U.S. Customs rules and regulations.

7. **SELLER OPERATIONS REPRESENTATIONS AND WARRANTIES.** Seller warrants that it complies with all applicable requirements of (a) the Federal Fair Labor Standards Act, and with all



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applicable regulations and orders of the United States Department of Labor; and (b) the National Labor Relations Act and other federal, state and local wage and hour and wage payment laws, and with all applicable regulations and orders issued under any of the foregoing. Seller further warrants that it does not and will not (a) discriminate in hiring on the basis of race, color, national origin, gender, religion or sexual orientation; (b) utilize child labor, prison labor, indentured or bonded labor, or labor obtained through human trafficking or slavery in the operation of its business; or (c) participate in any payment or authorization practices in violation of the Federal Foreign Corrupt Practices Act or other anti-corruption laws.

8. **MERCHANDISE TESTING.** Upon Purchaser's request and at Seller's expense, as set forth in the Vendor Manuals, Seller shall submit the Merchandise ordered herein to be tested for quality and compliance by test laboratories of the Purchaser's choice and in accordance with testing protocols of the Purchaser's choice. The Purchaser's right to make such testing requests shall be in addition to any rights the Purchaser may have to examine the Merchandise. Regardless of the results of any such test or examination, Purchaser's acceptance of any Merchandise so tested or examined shall not be deemed a waiver of any specification or warranty expressly provided herein or implied by law, nor shall Purchaser's failure to make such a test or other examination be deemed such a waiver.

9. **NON-COMPLIANCE.** Purchaser shall have all remedies available hereunder and allowed by law in the event that the Merchandise does not conform to the terms of this Purchase Order, including Merchandise (a) that is received by Purchaser after the Delivery Date specified in the Purchase Order; (b) that is received in quantities less than or in excess of quantities ordered; (c) that is damaged or defective in material or workmanship; (d) that is not according to the Purchaser's technical package/specification sheet, or sample provided by Seller, or not specified in the Purchase Order; (e) that is not in compliance with the applicable provisions of this Purchase Order and the Vendor Manuals, including without limitation all the representations and warranties in these Terms and Conditions and the quality standards, transportation terms and conditions, labeling and packing instructions and invoicing instructions in the Vendor Manuals; and (f) which for any reason, except payment of applicable duties and tariffs, will not be cleared for entry by U.S. Customs. If a shipment, or any portion of a shipment, is determined by sampling procedures to include Merchandise that is damaged or defective or otherwise subject to return as set forth above, the entire shipment or portion may be rejected and returned to Seller for the full purchase price of the returned Merchandise, plus any handling, shipping and storage costs and standard processing fees charged by Purchaser. Purchaser may also cancel any remaining unshipped portion of this Purchase Order or any other outstanding Purchase Order(s) for the same items. Payments for Merchandise prior to inspection shall not constitute acceptance and Purchaser reserves the right to hold for Seller or return to Seller, at Seller's expense, any rejected Merchandise. The Seller agrees that the Purchaser shall be under no duty to inspect Merchandise before resale and that all warranties, expressed or implied, shall survive inspection, acceptance and payment by Purchaser.

10. **REMEDIES; DEDUCTIONS AND SET OFFS.** The rights and remedies expressly provided herein and in the Vendor Manuals shall be cumulative and in addition to any other rights and remedies given by law or in equity, including without limitation, injunctive relief and the right of Purchaser to recover all incidental, special, consequential and punitive damages. Without limiting the foregoing, Purchaser, in its sole discretion, may elect to not return Merchandise: (i) in consideration of the Returns Allowance (ii) in the event the return of Merchandise is precluded by act of any government agency, regulatory authority or



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third party, (iii) in the event Purchaser has reasonable cause to believe that the Merchandise contain defects or hazards that could create a substantial risk of injury to any person or property, or (iv) in the case of private label Merchandise, Purchaser has reasonable cause to believe that Seller intends to dispose of the Merchandise in a manner likely to harm Purchaser reputation or goodwill. Unless otherwise agreed to herein: (i) Merchandise not returned by Purchaser may be disposed of by Purchaser in its sole discretion; and (ii) with respect to any Merchandise disposed of or returned by Purchaser, Seller will be liable for all costs and expenses related to the disposition or return, including any standard processing fees charged by Purchaser, any freight, storage, and disposal or destruction costs.

In addition to other remedies available to Purchaser, at the option of the Purchaser in its sole discretion Purchaser may also (a) return any damaged, defective or non-compliant Merchandise or associated shipments as provided above for full credit or refund of the purchase price; (b) assess late charges, charge backs or expense offsets for late or early shipments or shipment inaccuracies as provided in the Vendor Manuals; (c) repair any defective Merchandise and charge Seller such expense; or (d) purchase substitute items elsewhere and charge Seller for any loss incurred. Sums payable to Seller for the Merchandise shall be subject to all claims or defenses of Purchaser, whether arising from this Purchase Order or from any other transaction or occurrence between the parties, and Purchaser may set off and deduct against any such sums any indebtedness of Seller to Purchaser. Acceptance of the Merchandise by Purchaser or payment of all or any part of the purchase price by Purchaser shall in no way constitute a waiver of any of Purchaser's rights under this Purchase Order and the Vendor Manuals.

11. INDEMNIFICATION. Seller, its representatives, agents, subcontractors and employees agrees to defend (with counsel acceptable to Purchaser), indemnify and save harmless Purchaser from any and all claims, suits, fines, liabilities, damages, losses or expenses, including attorneys' fees and costs, asserted against or incurred by Purchaser by reason of, or arising out of or occurring in connection with (a) any injury to persons or property arising or resulting from any actual or alleged defect in the Merchandise; (b) any breach or alleged breach of the provisions of this Purchase Order, any of these Purchase Order Terms and Conditions, or the applicable provisions of the Purchaser's Manual; (c) any act or omission of Seller in the furnishing of Merchandise under this Purchase Order, including, but not limited to worker's compensation, discrimination or other employee related matters; and (d) the transportation or shipping of the Merchandise covered under this Purchase Order authorized by or in Seller's control. Seller shall not, without the prior written consent of Purchaser, settle or compromise any action, suit, proceeding or claim in which Purchaser is named as a party, or consent to the entry of any judgment in any such matter. All indemnification obligations of Seller hereunder shall survive termination or cancellation of this Purchase Order.

12. INSURANCE. Seller agrees to maintain insurance in full force and effect to fulfill Seller's indemnification obligations hereunder, and will furnish Purchaser with certificates of insurance evidencing coverage for Commercial General Liability Insurance including Contractual and Products Liability, on an occurrence basis, with at least \$1,000,000 combined single limit per occurrence, and in the aggregate (or such greater amount as may be required by the Vendor Manuals), and including Vendor's Endorsement naming Purchaser as an additional insured. By requiring insurance herein, Purchaser does not represent that coverage and limits will be adequate to protect Seller and such coverage and limits shall not be deemed as a limitation on Seller's liability hereunder.



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13. **CONFIDENTIALITY.** Seller may have access to certain confidential, proprietary or trade secret information relating to the operations, products, sales and business of Purchaser and its affiliated and related companies or third parties including, without limitation, inventions, improvements, trade secrets, processes, data and know-how, software programs, techniques, marketing plans, strategies, forecasts, unpublished copyrightable material, customer lists, personal information with respect to employees, customers or other sources of supply, prospects or projections, manufacturing techniques, formulas, research or experimental work, work in process or any other proprietary or confidential matter (“Confidential Information”). Confidential Information may be in written or verbal form, whether or not marked as confidential. Confidential Information shall exclude any information that: (i) is or becomes part of the public domain through no wrongful act or failure to act on the part of Seller; (ii) that is rightfully received by Seller from a third party in possession of it who was not subject to any restrictions on the disclosure of such information; (iii) is approved in writing for release by Purchaser, or (iv) which has been independently developed by Seller (as evidenced by its written records) without violation of these Purchase Order Terms and Conditions or any rights of Purchaser hereto. Seller agrees that, except as directed by Purchaser, Seller will not at any time use for its own benefit or disclose to any person for any purpose any Confidential Information, or permit any person to use, examine and /or make copies of any documents, files, data or other information sources which contain or are derived from Confidential Information, whether prepared by Seller or otherwise coming into the Seller’s possession or control, without the prior written permission of Purchaser. Seller shall maintain security procedures and practices sufficient to protect the security and confidentiality of Confidential Information from unauthorized access, destruction, use, modification or disclosure, but in no event less than a reasonable degree of care.

14. **WAIVER.** A waiver of or failure to perform any one or more of the conditions of any Purchase Order shall not constitute a waiver of or an excuse for nonperformance as to any other part of these Purchase Order Terms and Conditions or any other Purchase Order.

15. **AFFILIATES.** Purchaser shall be expressly permitted to resell the Merchandise to its affiliated companies for resale. Seller acknowledges and agrees that all covenants, representations and warranties of Seller hereunder, and all express and implied warranties with respect to such Merchandise, are also for the benefit of and extend to Purchaser’s affiliates. Seller agrees that Purchaser’s affiliates shall be entitled to exercise any rights of the Purchaser and to make any claims and return any Merchandise directly to Seller pursuant to the terms of any Purchase Order.

16. **INTELLECTUAL PROPERTY.** Seller agrees that it will not use any trademark, service mark, trade name or trade dress owned or controlled by or licensed to Purchaser or any of its affiliates, except in connection with Merchandise shipped to Purchaser in accordance with a valid Purchase Order. Seller agrees that all trademarks and trade names of Purchaser belong to or are licensed to Purchaser and Seller will make no claim of right to use or of ownership nor will Seller attempt to register any such trademark or trade name. Seller agrees that Merchandise rejected or returned for any reason pursuant to the terms of any Purchase Order, whether or not such rejection is disputed by Seller, including but not limited to Merchandise rejected or returned due to shipment after the delivery date or cancel date specified in the Purchase Order, will not be resold or otherwise distributed by Seller unless all labels, tags, logos, monograms and other items or characteristics identifying any trademark, service mark, trade dress or trade name owned or controlled by or licensed to Purchaser or its affiliates and used by Purchaser or its affiliates in connection with any such Merchandise, have first been removed.



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17. **GOVERNING LAW.** This Purchase Order and the rights and obligations of the parties hereunder shall be determined in accordance with the laws of the state in which Purchaser is located as indicated on the first page of this Purchase Order, and shall not be subject to or governed by the U.N. Convention on Contracts for the International Sale of Goods. If litigation arises under this Purchase Order or these Purchase Order Terms and Conditions, or as a result of any transaction contemplated or resulting from either party's performance or breach thereof, jurisdiction of such litigation shall be in the state in which Purchaser is located, at the option of Purchaser, and Seller hereby consents to such jurisdiction and venue. Any award or judgment of any of said courts may be entered and enforced in any other domestic or foreign court of competent jurisdiction, and shall be awarded full faith and credit.

18. **ASSIGNMENT OF WARRANTIES.** Seller hereby assigns to Purchaser all assignable warranty rights with respect to the Merchandise in the Purchase Order, including without limitation all rights of Seller under warranties of any manufacturer of any of the Merchandise or any part or component thereof.

19. **ENFORCEABILITY.** Each Purchase Order is enforceable by Purchaser directly against Seller, regardless of whether the Purchase Order was submitted directly to Seller by Purchaser or was submitted to Seller by another party on behalf of Purchaser. No such other party shall have any authority to act for Purchaser, bind Purchaser to any agreements or modifications or otherwise act as agent for Purchaser.

20. **NO TRANSFER OR ASSIGNMENT.** Seller shall not assign or transfer any rights or delegate any duties which Seller may have under this Purchase Order, in whole or in part, except the right to receive payment for Merchandise delivered and accepted in accordance with this Purchase Order. Any attempted assignment or transfer in violation of the foregoing is void and not binding on Purchaser unless the prior written consent of Purchaser is obtained. No such assignment or transfer shall bar Purchaser from asserting against Seller or the transferee or both any claim Purchaser may have against Seller.

21. **SEVERABILITY.** Should any of the terms and conditions of this Purchase Order and related documents, including without limitation the Vendor Manuals, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining provisions.

22. **MISCELLANEOUS.** Electronic transmissions shall be deemed effective to the same extent as if originals had been personally delivered or mailed. In any dispute under this Purchase Order or these Purchase Order Terms and Conditions, whether or not litigation is commenced, the prevailing party shall be entitled to its costs and expenses incurred, including reasonable attorneys' fees and costs.

Revised: February 23, 2018