

GENERAL TERMS AND CONDITIONS OF PURCHASE ORDERS

- 1. OFFER AND ACCEPTANCE.** These General Terms and Conditions govern all purchase orders issued by or relating to Macy's, Inc. and/or any of its affiliates (including Bloomingdale's) (each a "Purchase Order"). In every Purchase Order, the "Purchaser" is the Macy's entity and the "Vendor" is the supplier of the merchandise described in such Purchase Order and material associated with such merchandise and described in such document (the "Goods"). Each Purchase Order is only an offer, the effectiveness of which is conditioned on Vendor's acceptance of such offer in accordance with its terms. Vendor may accept a Purchase Order only as presented. Accordingly, each and every Vendor has agreed or is deemed to agree to these terms and conditions. Purchaser will not consent to or accept any change or supplement to any Purchase Order and objects to any Vendor attempt to condition its acceptance upon any such Vendor change or supplement to any Purchase Order or any term thereof. Purchaser's objection to a Vendor effort to vary any of these terms shall not be waived by acceptance of Goods. Vendor's acceptance may be effected only by (i) written confirmation, (ii) shipment of Goods in accordance with this Purchase Order, (iii) participation in an inventory replenishment program and/or (iv) other Vendor performance pursuant hereto and in accordance herewith; *provided that*, if Vendor does not ship all Goods ordered hereunder on or before the "Cancellation Date" specified herein, then, in addition to any other right provided for, including in Section 5, Purchaser also reserves the right to regard this Purchase Order as having lapsed without Vendor acceptance with respect to Goods that have not been shipped on or before the Cancellation Date and, therefore, null and void as to those Goods.
- 2. EDI TRANSACTIONS.** Transactions under Purchase Orders are to be effected by electronic data interchange ("EDI") and are subject to compliance with the Purchaser vendor standards and materials posted on macysnet.com, including the requirements of the Macy's Transportation Office (collectively the "Vendor Standards," which are included in references to Purchase Orders for purposes of these General terms and Conditions). EDI transactions utilize EDI documentation that complies with published industry guidelines. Each party shall bear its own EDI-related costs, including costs for any equipment, software and services required for effective and reliable EDI transactions, and costs for security procedures sufficient to ensure that EDI transmissions are authorized and protected from improper access. In order to utilize EDI, each party must have an electronic signature that accompanies all of its transmissions to serve as verification of such transmission. Each party shall regard the other's electronic signature as confidential and subject to Section 18, *below*. To the extent that any transactions effected by paper-based documentation, such transactions are also subject to the Purchase Order but shall subject Vendor to costs and administrative charges.
- 3. VENDOR STANDARDS GENERALLY.** Purchaser's Vendor Standards set forth Purchaser's specifications and requirements for Vendor's performance of its

obligations under every Purchase Order. The Vendor Standards, together with these General Terms and Conditions (included within the "Vendor Standards" for purposes of this Section 3), as posted on macysnet.com, are incorporated into every Purchase Order by this reference as though fully stated in full in each Purchase Order. Vendor agrees that this notice of and reference to said Vendor Standards constitutes actual and reasonable notice thereof, and that Vendor is subject to the Vendor Standards in their entirety. Vendor shall not deviate from the Vendor Standards unless pursuant to Purchaser's written instruction and Vendor shall be liable to Purchaser for Vendor's failure to comply strictly with said Vendor Standards. Vendor further agrees that unauthorized deviation from the Vendor Standards shall obligate Vendor to pay and entitle Purchaser to recover liquidated amounts from Vendor, as specified in the Vendor Standards or, if no liquidated amount has been established for a particular deviation from the Vendor Standards, Purchaser shall be entitled to reimbursement of any costs Purchaser has incurred by reason of or related to Vendor's failure to fully comply with the Vendor Standards. Purchaser also may impose and recover administrative charges with respect to any such deviation. Vendor hereby authorizes Purchaser to charge all such liquidated amounts, costs and administrative charges back to Vendor.

4. **DELIVERY.** Unless Purchaser instructs otherwise in writing, Vendor shall deliver Goods in accordance with the applicable Purchase Order. Risk of loss and title to Goods shall pass to Purchaser only after Purchaser accepts delivery of such Goods at the destination designated by Purchaser in the Purchase Order. Untimely deliveries, including Goods not shipped as scheduled, shall constitute non-conforming tenders as to which Purchaser may apply the provisions of Sections 1 and 5 and, in addition, Purchaser reserves the right to impose a reasonable charge for storage or additional handling due to an untimely delivery. Further, Vendor's failure to follow the delivery instructions set forth in this Purchase Order, including the Macy's Transportation Office requirements as posted on macysnet.com, serves as Vendor's agreement to pay freight expenses with respect to such delivery, and Purchaser reserves the right to charge Vendor for any such freight expenses as Purchaser pays in such circumstances, together with any other amounts, costs and/or administrative charges as may be applicable to such failure. Upon Purchaser's request, Vendor shall furnish Purchaser written proof of a delivery without charge.
5. **NON-CONFORMING TENDER.** Vendor shall ship Goods in accordance with Purchaser's requirements. The Goods so shipped shall be of the type(s) and in all respects be in accordance with the applicable specifications, including those contained in any description, sample, catalog, promotional material or other statements as may have been delivered or made to Purchaser. If Vendor tenders Goods that do not conform to the terms of this Purchase Order, including Goods that, in whole or in part, are not (i) delivered timely; (ii) as represented or warranted; (iii) fit for the purpose for which they were sold or otherwise defective; (iv) in the quantity ordered; (v) in accordance with the specifications upon which

the applicable Purchase Order was predicated; (vi) consistent with samples or (vii) otherwise in compliance with all other terms and conditions of the Purchase Order, such performance shall constitute a non-conforming tender. In the event of a non-conforming tender, Purchaser may elect, without any further authorization from Vendor, as to any or all of the Goods in question, to (i) accept the Goods, (ii) cancel its order, (iii) refuse to receive the Goods and/or (iv) return the Goods to Vendor at Vendor's expense. Regardless of which one or more of the four options Purchaser elects, in the event of a non-conforming tender, Vendor shall be obligated to pay Purchaser the liquidated amounts, related costs and/or administrative charges set forth in the Purchase Order. Vendor acknowledges and agrees that Purchaser's posting such amounts, costs and/or administrative expenses to Vendor's macysnet.com trial balance within four (4) weeks of the later of Purchaser's receipt of the non-conforming tender or Purchaser's discovery that the Goods were nonconforming, or Purchaser otherwise communicating such information to Vendor in writing (electronically or otherwise), shall constitute commercially reasonable notice of the non-conforming tender, notwithstanding that all or any part of the non-conformity may have been remedied before such date. Where the non-conforming tender involves a latent condition, notice to the Vendor within four (4) weeks of Purchaser having actual knowledge of the condition and, accordingly, of the non-conforming tender, shall also be deemed commercially reasonable notice. Vendor hereby knowingly and expressly waives any right, should one otherwise have existed, to receive notice of the non-conforming tender earlier or in any manner other than as given by Purchaser. Vendor may not cure a non-conforming tender except with Purchaser's consent. Purchaser's receipt and/or acceptance of a non-conforming tender shall not waive any Purchaser claim or right whether provided under this document, by law or under equity, including for harm suffered by reason thereof. Purchaser hereby conditions acceptance of Goods constituting or included in a non-conforming tender on the right to later reject said Goods or otherwise direct their disposition. Notwithstanding any other provision hereof, Purchaser shall be obligated to make payment only for Goods it elects to retain and, as to retained Goods, the price therefor shall be as specified in this Purchase Order, subject to offset for amounts due Purchaser, including amounts due because of Vendor's non-conforming tender. The requirements of this Purchase Order, including the requirements of the Macy's Transportation Office relating to delivery, and Vendor's timely performance of its obligations in accordance with such requirements are essential terms of each and every Purchase Order.

6. **TERMINATION BY PURCHASER.** Purchaser has the absolute right to cancel a Purchase Order for any reason with respect to Goods that have not been shipped by giving Vendor written notice of such cancellation. If prior to Purchaser's cancellation, Vendor has not breached any term or condition of this Purchase Order, Purchaser will, at Purchaser's option, either (i) purchase such Goods that Vendor, prior to Purchaser's cancellation, especially manufactured for Purchaser under the applicable Purchase Order, but only to the extent the Goods

are not suitable for sale to any other buyer, or (ii) compensate Vendor for reasonable and unrecoverable costs actually incurred by Vendor prior to Purchaser's cancellation in connection with the Goods in question; *provided that*, Purchaser's compensation to Vendor for such reasonable and unrecoverable costs incurred will not exceed fifty percent (50%) of Purchaser's purchase price for the Goods in question.

7. **PAYMENT TERMS.**

- A. Vendor shall comply with this Purchase Order concerning payment, payment instructions and invoices, including by providing correct, current payment information and instructions. Vendor shall be solely liable for its failure to comply with such requirements.
- B. In no event shall payment be due Vendor prior to the later of (i) the date that the Goods are delivered and (ii) the date that Purchaser receives Vendor's invoice with respect to such Goods, except that, as to Goods received prior to the applicable "Ship Not Before Date," payment obligations shall not accrue prior to such Ship Not Before Date.
- C. Vendor agrees and acknowledges that all discounts extended by it under any Purchase Order or otherwise are intended to be trade discounts to which Purchaser is entitled, regardless of the timing of its payment for Goods.
- D. Purchaser expressly reserves the right to offset any amounts claimed by Purchaser against any amount otherwise due Vendor. If Purchaser and one or more "Purchaser Affiliates" (*i.e.*, Macy's, Inc. and its operating entities, including direct or indirect subsidiaries) are doing business with Vendor, Purchaser and/or any such Purchaser Affiliate shall have the right to transmit payment to Vendor on each other's behalf.
- E. Payments to Vendor may be made on a consolidated basis that nets the aggregate debits, credits and allowances of Purchaser and such Purchaser Affiliates.
- F. Upon Purchaser's request, Vendor shall provide monthly reports, in a form that complies with Purchaser's instructions, that track Goods ordered by Purchaser and like merchandise ordered by Purchaser Affiliates. Non-conforming tenders also may result in payment delays. Non-merchandise charges must be separately invoiced. Under no circumstances shall Purchaser be liable for any interest charges or late payment fees.

8. **PRICE REVISIONS.** Pricing for Goods shipped pursuant to this Purchase Order shall be as specified, except as otherwise provided in these General Terms and Conditions, including this Section 8. Specifically and notwithstanding any other provision of the Purchase Order, Vendor shall meet the lower prices of legitimate competition or accept cancellation of this Purchase Order with respect to the Goods in question. In addition, either party may seek an adjustment in the pricing for Goods, upon not less than sixty (60) days' notice before the scheduled delivery date, for a reasonable cause such as a change in the market for raw

materials utilized in the production of such Goods. A party seeking an adjustment pursuant to the preceding sentence shall submit documentation evidencing the justification for such request as is reasonably sufficient to the other party. Each party shall cooperate reasonably as to whether a price change request is justified by then existing circumstances, as evidenced by the documentation submitted, and any such adjustment may be effected only by mutual written agreement. In addition to the foregoing, any revisions that Purchaser accepts, confirms or otherwise expressly acknowledges in writing, as to pricing for Goods and/or other accommodations with respect to the economic terms of sale, are hereby incorporated herein.

9. **COMPLIANCE WITH LAWS; VENDOR COVENANTS.** Vendor covenants, represents, warrants and guarantees that:
- A. It has complied and shall comply with all federal, state and local laws, ordinances and codes, together with all relevant foreign laws, ordinances and codes, as well as all rules, regulations and guides promulgated thereunder or pursuant thereto, including all standards set forth therein as may be relevant to Vendor's performance hereunder (*collectively*, "Applicable Law"). It is Vendor's obligation to identify and comply with all Applicable Law that is relevant to its operations and/or Goods and Purchaser is expressly relying on Vendor's compliance with all such Applicable Law and this Purchase Order. For purposes of illustration, Applicable Law includes the Fair Labor Standards Act, Consumer Product Safety Act and the Consumer Product Safety Improvement Act of 2008, Poison Prevention Packaging Act, Radiation Control for Health and Safety Act, Federal Hazardous Substances Act, Flammable Fabrics Act, Food, Drug and Cosmetics Act, Magnuson Moss Warranty Act, Wool Products Labeling Act, Textile Fiber Products Identification Act, Fur Products Labeling Act, Care Labeling Rule, Fair Packaging and Labeling Act, Foreign Corrupt Practices Act and the Federal Trade Commission Act, and all like laws, together with all of the rules, regulations and guides promulgated thereunder. Vendor acknowledges and agrees that it is solely Vendor's obligation to identify and comply with all Applicable Law as may be in effect in all jurisdictions in which the Goods are transported or offered for sale or which are otherwise relevant to Vendor and/or Purchaser operations as of the date of acceptance of the Goods by Purchaser.
 - B. Neither Purchaser's acquisition nor sale of the Goods shall violate Applicable Law and the Goods were manufactured and conveyed by Vendor in compliance with Applicable Law, including any Applicable Law that regulates or otherwise concerns contents, standards, weights, measures, sizes, legends, labels, descriptions and/or any other particulars appearing on the Goods, packaging, containers or labels.
 - C. The Goods shall comply with Applicable Law, including that (i) such Goods were subjected to reasonable and representative tests in accordance with

procedures under Section 4(a) of the Flammable Fabrics Act, (ii) fabrics used or contained in each article of wearing apparel and fabrics otherwise subject to said Act are not so highly flammable as to be dangerous when worn and, (iii) where required, fabrics are marked or labeled in accordance with, and otherwise comply with the provisions of the Flammable Fabrics Act, any rules and regulations promulgated thereunder and amendment made thereto.

- D. Production of the Goods also shall comply with all Applicable Law relating to labor standards, including federal and state regulations governing wage and hours, the use of child and forced labor (including Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended), and regulations and orders of the U.S. Department of Labor (including as issued under Section 14 thereof). All contractors and suppliers involved with the production of the Goods shall be and remain registered and bonded in accordance with Applicable Law. As to Goods manufactured outside of the United States, Vendor shall comply with all applicable laws of the country where said Goods were manufactured.
- E. It shall maintain and provide to Purchaser together with the Goods and/or immediately upon request therefor any and all materials necessary for Purchaser to document that the Goods are in compliance with all Applicable Laws and shall use its best efforts to ensure that all such materials are available on a timely basis and sufficient for the purpose required by Purchaser, including that a "Continuing Guarantee of Compliance" for each Applicable Law, including those identified in this provision, is certified hereby as being in order and currently filed with each requisite governmental authority, including as to the: (i) Textile Fiber Products Identification Act (as filed with the Federal Trade Commission), (ii) Wool Products Labeling Act (as filed with the Federal Trade Commission), (iii) Flammable Fabrics Act (as filed with the Consumer Products Safety Commission); (iv) Fur Products Labeling Act (as filed with the Federal Trade Commission); and (v) the Fair Labor Standards Act, and confirmation of such filings is made or deemed to be made by each invoice provided by Vendor to Purchaser in respect of covered Goods. In the event that any of the foregoing or any other certificates of compliance required by any Applicable Law are not on file with the appropriate governmental authority, Vendor shall provide such continuing guaranties to Purchaser, which shall be delivered to the attention of: Vendor Services, Macy's Corporate Services, 2101 East Kemper Road, Cincinnati, OH 45241, which continuing guaranties each shall clearly identify Vendor, including by its duns number. Whether provided to a governmental authority or to Purchaser, each such continuing guaranty shall specify the Goods covered and be in compliance with all Applicable Law, including that such certification shall be current, and shall set forth such certification in proper form and language. Such certifications shall also assure that all such Goods are not misbranded, falsely or deceptively labeled, improperly advertised or invoiced and that they comply with the terms and requirements of all

Applicable Law governing the safety, labeling, advertising or invoicing of such Goods.

- F. The Goods shall be free from defects in material and workmanship and shall be fit and safe for the use(s) for which they are normally and reasonably produced.
- G. In the event and to the extent that this Purchase Order relates to Goods that may require a consumer warning under the California law commonly known as "Proposition 65," Vendor shall so advise Purchaser, in writing, before proceeding to accept or otherwise process the order. If Purchaser, after receipt of Vendor's written information concerning the applicability of Proposition 65, advises Vendor that it wishes to confirm the order and proceed with a purchase of Goods that may be subject to such California law, Vendor shall place warnings that comply with such law directly on such Goods as may be offered for sale by Purchaser in California, regardless of whether such Goods are to be offered for sale by mail, by electronic media, or in retail outlets.
- H. Neither the Goods nor any conduct of Vendor (or its agent) infringes on any existing or alleged design, design patent, patent, trademark, trade name, copyright, trade dress, right of privacy or similar right of any person or entity.
- I. The Goods are not made, in whole or in any part, with any domestic dog or cat fur or other elements derived from any such animal.
- J. Vendor's conduct with respect to the acquisition, manufacture, production and/or sale of the Goods to Purchaser shall comply with Purchaser's corporate policies as set forth in the Vendor Standards or otherwise provided to Vendor, including Purchaser's Vendor/Supplier Code of Conduct and/or Statement of Corporate Policy concerning the use of child or forced labor and unsafe working conditions.
- K. Vendors shall cause each and every one of their employees, agents, contractors (including freelancers), and representatives (collectively, "Vendor Representatives") to comply with all Applicable Laws and with all Purchaser policies and procedures at all times when interacting with Purchaser or Purchaser Affiliates and/or their respective employees, customers and invitees, whether or not then on Purchaser premises or the premises of any Purchaser Affiliate. To the extent that any Vendor provides Vendor Representatives, equipment and/or fixtures to Purchaser or any Purchaser Affiliate, such Vendor shall use its best efforts to ensure that all such Vendor Representatives, equipment and/or fixtures shall likewise comply with Applicable Law and the policies and procedures of Purchaser and Purchaser Affiliates. Vendors shall comply with any request by Purchaser (or a Purchaser Affiliate) to reassign any one or more Vendor Representatives so that such persons are no longer working with Purchaser (or applicable Purchaser Affiliate) or assigned to any of their respective premises.

- L. Vendor also shall comply with Purchaser's policy in respect of communications and/or gifts to Purchaser employees and/or employees of Purchaser Affiliates. All communications and/or gifts must be disclosed to Purchaser (and the Purchaser Affiliate, if applicable) and, to the extent that Vendor provides any benefit, compensation or award of any kind to any employee of Purchaser or Purchaser Affiliate, Vendor shall comply with all Applicable Laws, including in respect of reporting such benefit, compensation or award to all required governmental entities, whether for tax purposes or otherwise. The foregoing compliance shall include issuance of any necessary forms or reports, as well as notice to Purchaser and to the relevant Purchaser Affiliate. Upon Purchaser's request, Vendor shall provide a certification executed by a principal officer, confirming compliance herewith.
10. **EFFECT OF VENDOR COVENANTS.** By accepting this Purchase Order, Vendor acknowledges and agrees that its representations, warranties and guaranties herein and hereunder have the same force and effect as though provided in a separate written agreement executed on behalf of Vendor by its authorized signatory and delivered to Purchaser. All Vendor representations, covenants and warranties, express or implied, shall survive inspections, acceptance and payment by Purchaser or Purchaser's customer.
11. **RESERVATION OF PURCHASER RIGHTS.** Purchaser reserves the right to advertise, offer the Goods for sale, and to sell such Goods at any Purchaser retail facility and/or by means of any medium, including electronic or other non-traditional venues. The foregoing reservation is an essential term of all Purchaser transactions effected under or pursuant to this Agreement.
12. **OFFER OF EMPLOYMENT.** It is an essential and material term and condition of this Purchase Order that Vendor expressly acknowledges and agrees that Purchaser may terminate and cancel any order, in whole or in part, in the event that Vendor, without Purchaser's consent, extends an offer of employment to, employs, retains, hires, engages (or attempts any of the foregoing) or otherwise secures the services of a person who, at the time of such Vendor conduct or within the preceding one hundred and eighty (180) days, was employed by Purchaser (or any Purchaser Affiliate doing business with Vendor) in the position of Buyer or an equivalent or superior position.
13. **INDEPENDENT CONTRACTORS.** Vendor is an independent contractor. No provision of this Purchase Order shall, or shall be deemed or construed to, create any other relationship between the parties such as employer and employee, principal and agent, partners, joint-venturers, or any association other than that of independent contractors. Accordingly, Vendor is not and shall not be deemed to be an agent of Purchaser and is without any authority to enter into any contract or take any action on behalf of or so as to obligate Purchaser or any Purchaser Affiliate. Except as otherwise specified herein, Vendor shall have exclusive control and discretion over the manner, means, details and methods by which it performs its obligations hereunder, and is solely responsible for the

provision of all tools, equipment, and facilities necessary for the performance and for the payment of all license and other fees applicable to Vendor's performance.

14. **INDEMNIFICATION.** To the fullest extent permitted by law, Vendor shall defend, indemnify and hold harmless Purchaser (which term "Purchaser" shall, for purposes of this Section 14, include all Purchaser Affiliates within each reference thereto) from and against any and all actions, legal or administrative proceedings, debts, demands, interest, claims, suits, proceedings, liabilities, damages, penalties, fines, costs and expenses (including defense costs and attorney's fees) and/or any other losses asserted against, incurred by or imposed upon Purchaser by reason of or as a result of any actual or alleged violation or breach by Vendor of any of the warranties, representations, covenants or other obligations of Vendor set forth herein (each a "Claim"), including any Claim of infringement or alleged infringement of any existing or alleged design, design patent, patent, trademark, trade name, copyright, trade dress, right of privacy or similar right of any person or entity, or any Claim as may be brought against Purchaser by any customer or other person or entity arising from or connected with the use (regardless of any negligent acts or omissions), possession or resale of any and all Goods covered by this Purchase Order, from any patent or latent defects in such Goods or the dangerous condition thereof, or by virtue of any misrepresentation or breach of warranty (express or implied) in respect of such Goods, or otherwise relating to the transactions contemplated hereby, including as may relate to the subsequent sale of any Goods and the parties' ongoing relationship, utilizing counsel of Purchaser's choice unless provided by an insurer, in which even counsel shall be reasonably satisfactory to Purchaser, all as confirmed in writing. Accordingly, Vendor expressly agrees that it shall likewise defend, indemnify and hold harmless Purchaser from any Claim related to the conduct of Vendor Representatives, Claims by or on behalf of any such Vendor Representatives and/or any equipment and/or fixtures designed, sourced and/or in any manner provided, in whole or in part, by Vendor. Further, Vendor's defense, indemnification and hold harmless obligations set forth above shall apply with equal force and effect to Vendor's responsibility in respect of any recalls of its Goods, whether voluntary or involuntary, including as requested or required by any governmental agency, and with all costs and expenses as may be required of Purchaser to assure compliance with all Applicable Laws, including in respect of Vendor representatives, fixtures and equipment and/or recalls relating to Goods. Notwithstanding the foregoing, no settlement of any such Claim may be made without Purchaser's consent to the terms thereof and, *further provided*, Purchaser may, at its sole option, provide for its own defense in the event of such Claim and Vendor shall pay any and all of costs and/or expenses (including reasonable counsel fees and expenses) incurred by Purchaser in the protection of its interests.
15. **INSURANCE.** Vendor shall secure and maintain appropriate products and contractual liability insurance coverage in adequate amounts, including commercial general liability coverage of not less than \$1,000,000 per occurrence,

\$2,000,000 general aggregate, \$1,000,000 personal and advertising injury, \$1,000,000 products/completed operations aggregate, all written on an occurrence basis on ISO Form CG-00-01-07-98 or its substantial equivalent, which policy shall provide coverage on a primary basis, and not be contributory with or excess over any other insurance available to Purchaser and shall provide cross-liability coverage as provided under standard ISO forms' separation of insureds clause and shall be endorsed with ISO Form CG-24-04 (Waiver of Transfer of Right of Recovery Against Others to Us) or the substantial equivalent with no exclusion, limitation nor endorsement contained in the policy that serves to restrict or limit Contractual Liability coverage, , or Explosion, Collapse and Underground Property coverage and shall specifically include coverage in respect of Vendor's obligations, including in respect of Products/Completed Operations coverage and indemnification, under this Purchase Order. Such Vendor insurance shall name Purchaser and Macy's, Inc. as additional insureds and shall provide for the investigation, defense and satisfaction (by settlement or otherwise), at no cost to Purchaser, of any claims, suits, liabilities, damages, costs and expenses, asserted against or incurred by Purchaser and, upon Purchaser's request, Vendor shall furnish Purchaser with certificates evidencing such insurance coverage or the actual endorsements and/or policies, as required by Purchaser. Vendor shall bear its own insurance and insurance-related expenses. Vendor's liability shall not be limited to its insurance coverage.

16. **CHANGE IN SPECIFICATIONS.** Purchaser may change, add to, delete from or otherwise revise its specifications for Goods by notice to Vendor. Such notice shall be effective upon receipt as to further production of such Goods. Vendor may not change, add to, delete from or otherwise revise any Purchaser specifications, in any respect, without Purchaser's prior written approval.
17. **ANCILLARY VENDOR SERVICES.** In addition to providing Goods, Vendor shall provide and schedule, in coordination with Purchaser, warehousing and delivery of such Goods. Vendor also shall provide a qualified and experienced account executive, together with such additional person(s) as may be necessary, to ensure that Vendor performs its obligations under this Purchase Order in accordance with Purchaser's requirements. Such ancillary vendor services shall also include support provided to Purchaser or any Purchaser Affiliate to enhance sales of the Goods, which shall include providing Vendor Representatives, equipment and fixtures, with all such obligations to be performed in a first-class and professional manner that complies with Applicable Law, all for which Vendor shall be responsible
18. **CONFIDENTIALITY.** **All non-public information concerning Purchaser and/or a Purchaser Affiliate, as may be stated in this Purchase Order, or otherwise provided or disclosed to Vendor with respect to the Goods and/or any Purchaser operation or facility, are the strictly confidential, trade secret property of Purchaser.** Purchaser's confidential material includes all non-public information, such as designs, patterns, concepts and/or artwork provided to Vendor or Vendor's agent for incorporation into or as the basis of any

component of the Goods. Vendor further acknowledges and agrees that all of the foregoing information, including information that relates to the Goods or their design, to the Purchaser, to Purchaser's pricing, sales, customers, assets, liabilities, to any other business affairs of Purchaser, or to the terms and conditions of this Purchase Order, is confidential. In the event, and to the extent, that Purchaser provides Vendor (or Vendor otherwise gains access to) any personally identifiable information about any Purchaser customer or other person, no matter how obtained, such information shall be deemed Purchaser's strictly confidential and proprietary information and may be used solely for the specific purpose for which it was provided and not for any other purpose such as, for example, Vendor's marketing efforts. Vendor further agrees that in no event may it collect any customer information, use or disclose any such personally identifiable information to any person or entity other than to Purchaser or a Purchaser Affiliate requesting same, unless pursuant to a separate written agreement executed on behalf of Purchaser by its authorized signatory. In respect of all confidential information and specifically including all customer-related information, Vendor shall institute and maintain reasonable precautions against any unauthorized use, access or disclosure and shall, in the event thereof, immediately report such unauthorized use, access or disclosure to Purchaser and provide assistance in the event that any notification with respect thereto is required, all at Vendor's cost and expense. Vendor agrees that it shall not divulge, furnish, make available or in any manner disclose or use (except in furtherance of the performance of Vendor's obligations to Purchaser under and pursuant to this Purchase Order) any confidential information whatsoever in respect of Purchaser or any Purchaser Affiliate or the subject matter of this Agreement and agrees to take and to cause its officers, employees and agents to take such action as shall be necessary, prudent or advisable to preserve and protect the confidentiality of such Purchaser information and material; provided that, Vendor's obligations in respect of any and all confidential information shall include the proper disposal by destruction of any such information, including material that includes any version thereof.

19. **DISPUTES AND REMEDIES.** In the event of a dispute with respect to this Purchase Order, the parties shall endeavor, in good faith, to reach an amicable resolution of the dispute. If the dispute is not resolved within thirty (30) days after receipt of the notice of the existence of the dispute, either party may seek any remedy provided for herein or otherwise available to such party, including judicial resolution in accordance with Section 22. As to disputes concerning any amount invoiced by Vendor, Vendor shall provide to Purchaser, promptly after any Purchaser request therefor, such additional documents and/or information as Purchaser reasonably may request, including written proof of delivery. Should Purchaser dispute any invoice, in whole or in part, Purchaser may withhold the disputed amount and Purchaser's failure to pay such disputed amount shall not be deemed a breach of the Purchase Order or otherwise subject Purchaser to any liability, charge or penalty if Purchaser posts the disputed amounts to Vendor's macysnet.com trial balance no later than fifteen (15) days after the date

that such amount otherwise would have been due and payable to Vendor. Purchaser shall be entitled, at all times, to set off any amount owing to it (or to any Purchaser Affiliate) from Vendor (or any of its respective affiliates), against any amount otherwise payable to Vendor by Purchaser (or any Purchaser Affiliate). The provisions of this Section 19 do not limit Purchaser's ability to cure any non-conformity and to charge Vendor for the related liquidated amounts, costs and administrative expenses as otherwise provided for, including as set forth in Section 5. In addition to any other Purchaser right or remedy available hereunder, by law or in equity, Purchaser further reserves the right to cancel this Purchase Order, in whole or in any part, and to return to Vendor, at Vendor's expense, any Goods not in compliance herewith or as to which any claim of infringement of any existing or alleged design, design patent, patent, trademark, trade name, copyright, trade dress, right of privacy or similar right of any person or entity is made, and Vendor agrees to reimburse Purchaser fully for any and all expenses incurred in respect of such returned Goods. No action for breach of this Purchase Order may be commenced more than eighteen (18) months after the accrual of the cause of action except for Claims arising under Section 14, which shall be subject to the limitations period applicable to such Claims under New York law.

20. **DEFAULT.** Vendor's failure to observe or perform any term, covenant or agreement contained in this Purchase Order shall constitute a breach that, if not cured within five (5) days of Purchaser's notice, shall constitute a Vendor default and entitle Purchaser to assert any right granted Purchaser by this Purchase Order and/or by law or in equity, including a right to terminate this Purchase Order, in whole or in any part. Further, any of the following acts by or in respect of Vendor likewise shall constitute such a Vendor default: (i) making a general assignment for the benefit of its creditors, (ii) commencement, by or against Vendor, of any proceeding seeking to adjudicate it a bankrupt or insolvent unless such proceeding has not been stayed or dismissed within sixty (60) days, (iii) commencing any action seeking liquidation, reorganization, adjustment or other relief under any law relating to bankruptcy or reorganization and/or (iv) Vendor's failure to perform or delay in performing an obligation hereunder by any cause beyond Vendor's reasonable control, whether by flood, fire, tempest, earthquake, strikes, labor disputes, war, act of God, embargo, civil commotion or government regulation. Vendor acknowledges that its timely and complete performance is an integral part of the consideration for Purchaser entering into this Purchase Order. Accordingly, Vendor further acknowledges that, at any time that Purchaser deems itself insecure with respect to the performance of Vendor's obligations, Purchaser may demand, in its sole discretion, from Vendor such assurances as it deems adequate of Vendor's future performance of its obligations hereunder and in the event that vendor either fails to timely provide such assurance to Purchaser's reasonable satisfaction or otherwise fails to so perform, Purchaser, in its sole discretion, may suspend its respective performance or terminate this Purchase Order in whole or in part based upon a deemed anticipatory breach by Vendor. Nothing contained in this Section 20 or elsewhere in this

Purchase Order shall provide Vendor with a right to cure a non-conforming tender without Purchaser's consent.

21. **LIMITATION OF DAMAGES.** Neither party shall be liable to the other for any special, incidental, exemplary or consequential damages arising from or as a result of any transaction occurring hereunder, including any delay, omission or error in the electronic transmission or receipt of any document pursuant to this Purchase Order, even if such party has been advised of the possibility of such damages.
22. **GOVERNING LAW.** This Purchase Order shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its provisions regarding conflict of laws. Any action or proceeding arising out of, concerning or affecting, in whole or in part, this Purchase Order shall be brought in a state or federal court in the State of New York, County of New York. All disputes shall be resolved individually, without resort to any form of class action and both parties waive trial by jury in any such action.
23. **AUDIT.** Purchaser shall have the right to inspect and audit, during normal business hours, Vendor's records and documents with respect to Vendor's sales to Purchaser and/or any Purchaser Affiliate, to ensure that Vendor is complying with the provisions of this Purchase Order.
24. **INTERRUPTION OF PURCHASER'S BUSINESS.** Interruption of or interference with Purchaser's business by a cause beyond Purchaser's reasonable control, including fire, flood, tempest, earthquake, strikes, labor disputes, war, act of God, embargo, civil commotion or government regulation shall give Purchaser the option to cancel, in whole or part and without any liability to Vendor, any unfilled portion of this Purchase Order.
25. **CONSTRUCTION.** For purposes of this Purchase Order, except as a specific context may otherwise require: (i) the term "party" refers to Vendor or Purchaser; (ii) the words "include," "including" and like terms are to be construed as inclusive and without limitation; (iii) every reference to "Purchase Order" or "Agreement" shall be deemed to include the Vendor Standards, all schedules, exhibits, attachments and material incorporated by reference, as any of them may be amended from time to time, all as posted on macysnet.com or as otherwise communicated to Vendor; and (iv) references to days or months are intended and are to be construed as specifying calendar days or months. No provision of this Purchase Order shall be construed against a party hereto by virtue of the fact that such party drafted or dictated such provision, or the Purchase Order as a whole.
26. **NOTICES; PURCHASER RESPONSES.** All notices required hereunder or otherwise provided with respect hereto shall be in writing and shall be delivered by hand or receipted courier, sent by US mail, registered or certified with return receipt requested if addressed to Purchaser, or electronically unless otherwise required in other written Purchaser instructions. It is the agreement of the parties that any response, including any consent or approval, requested of or to be provided by Purchaser must be given or confirmed in writing and signed by Purchaser's

authorized representative in order to be effective. Unless otherwise specified, Purchaser may withhold or delay its response, in its sole discretion and in no event may Purchaser's failure to respond be deemed to constitute an affirmative response.

27. **EFFECTIVENESS; AUTHORITY.** This Purchase Order shall be binding and effective only after if it is executed as provided herein by Purchaser's authorized signatory. Each party represents and warrants to the other that it has the full right, power and authority to enter into and perform this Purchase Order in accordance with all of its terms and that the execution and delivery of this Purchase Order has been duly authorized by proper corporate action.
28. **AMENDMENTS AND WAIVERS.** This Purchase Order may not be amended or modified in any respect except in a writing signed by the parties hereto. No term of this Purchase Order may be supplemented, amended, waived or otherwise affected by any inconsistent Vendor act or inconsistent or additional language in Vendor's documentation. In order to be effective, execution on behalf of Purchaser of any writing must be by an authorized signatory thereof. Purchaser's failure to enforce any provision of this Purchase Order, or to exercise any right or remedy resulting from a breach thereof, shall not be construed as a waiver of any Vendor breach or as consent to any deviation from the Purchaser's requirements hereunder. Further, neither Purchaser's acceptance of full or partial Vendor performance nor Purchaser's past custom or practice shall be construed as a waiver of any such Vendor breach or as Purchaser's consent thereto.
29. **SURVIVING OBLIGATIONS.** Except as to obligations theretofore incurred or that are required to be performed thereafter, upon the expiration (by satisfaction or otherwise) or earlier termination of this Purchase Order, neither party shall have any further obligation to the other except that, notwithstanding any other term or provision of this Purchase Order, neither such expiration nor termination shall terminate, reduce or limit any Vendor indemnification, covenant, representation, warranty or guaranty provided to Purchaser (or any Purchaser Affiliate) hereunder or pursuant hereto or impair any Purchaser right with respect thereto, including as to any subsequent support, whether by providing Vendor Representatives, equipment or fixtures, for resale of Goods by Purchaser or any Purchaser Affiliate.
30. **ASSIGNMENT.** This Purchase Order shall be binding upon the parties hereto and their permitted assigns; *provided that*, this Purchase Order is personal as to Vendor and Vendor may neither assign any right nor delegate any obligation hereunder without Purchaser's consent. Purchaser shall not be required or obligated, without regard to the circumstances then prevailing, to accept performance of any Vendor obligation from any party other than Vendor, without regard to the relationship between Vendor and such other person or entity. In no event may Purchaser be bound to any obligation except by a written agreement executed on behalf of Purchaser by an authorized signatory thereof. Specifically, Vendor, on its own behalf and on behalf of any person or entity as may assert a claim on Vendor's behalf or in any manner derived from Vendor (including a factor or other person or

entity that, by payment of money or otherwise, acquires any interest in Vendor's business or receivables), agrees and acknowledges that this Agreement sets forth all rights and remedies to which Vendor and any such person or entity deriving any right from or through Vendor (including a factor) may be entitled, and that under no circumstances whatsoever shall any person or entity claiming any derivative right (including a factor) have any greater right or claim than that of Vendor or be entitled to any defense or offset other than that to which Vendor itself would be entitled hereunder.

31. **BENEFICIARY OF AGREEMENT.** All Purchaser Affiliates are and shall be deemed to be third party beneficiaries of this Purchase Order. Purchaser and each Purchaser Affiliate also shall be deemed to be a third party beneficiary of Vendor's agreement(s) with any third party regarding the production or distribution of the Goods and any component thereof. No person or entity other than a Purchaser Affiliate shall be or shall be deemed to be a third party beneficiary of this Agreement. Accordingly, no person or entity other than Vendor, Purchaser and/or one or more Purchaser Affiliates or a permitted assignee may seek to enforce any right hereunder in its own name. Any person or entity asserting a derivative claim, including in respect of Vendor, any factor, seeking to enforce any right or claim hereunder derived from Vendor, may not assert such right or claim except to the extent that such right or claim could have been asserted by the party and in no event shall any different or greater defenses be permitted with respect to any such derivative matter without regard to any writing to the contrary.
32. **SEVERABILITY.** The unenforceability or illegality of any provision of this Purchase Order shall not render any other provision of this Purchase Order unenforceable, null or void so long as the provisions remaining enforceable are sufficient to constitute a legally binding agreement.
33. **ENTIRE AGREEMENT.** This Purchase Order, including the Vendor Standards, and any attachments and other material incorporated herein by reference, constitutes the entire agreement of the parties as to its subject matter. It supersedes all prior representations or agreements, oral or otherwise, with respect thereto. No obligation to enter into any further transaction may be implied from this Purchase Order. This provision is applicable in all circumstances, without regard to whether this Purchase Order establishes a new transaction and/or confirms an existing arrangement or prior course of dealing between the parties.