

## MASTER PURCHASING AGREEMENT

This document integrates and replaces the documents formerly referred to as the Master Contract and the Terms and Conditions of Purchase Orders.

1. **OFFER AND ACCEPTANCE.** This document and the applicable [Exhibit A](#) and/or [Exhibit B](#), which are hereby incorporated, both as posted on [macysnet.com](#) and as updated from time to time, govern all purchases by the business organization identified as the “**Purchaser**” on the relevant order form and as further defined in [Exhibit A](#) and/or [Exhibit B](#) (“**Purchase Order**”). Such Purchase Order, together with this agreement (the “**Agreement**”), shall be the final expression of the terms and conditions between the parties for the sale of goods (“**Goods**”) or the provision of services (“**Services**”, and together with Goods, “**Product**”), which terms include collateral, signage, fixtures, and other materials related to the Product. The supplier of Product as identified on the Purchase Order is the “**Vendor**”. Vendor’s acceptance may be effected by (i) written confirmation, (ii) provision of Product in accordance with a Purchase Order, (iii) participation in an agreed upon inventory replenishment program, (iv) other Vendor performance in accordance herewith; provided that, if Vendor does not ship all Goods ordered thereunder on or before the “**Cancel Date**” specified therein, then, in addition to any other rights of Purchaser under law, Purchaser may declare that the Purchase Order is null and void as to those Goods. No terms in any acceptance or other writing from Vendor shall be deemed to form a part hereof. Purchaser hereby expressly objects to and rejects any Vendor attempt to condition its acceptance of a Purchase Order upon any such change. All Purchase Orders shall be deemed to be executory contracts until Vendor has fully performed all terms.
2. **MACY’S VENDOR STANDARDS.** Macy’s [Vendor Standards](#), as posted on [macysnet.com](#) and as updated from time to time, set forth certain specifications and requirements Vendor must comply with for every Purchase Order (“[Vendor Standards](#)”), including supplemental standards applicable to Vendor’s business or channel. The [Vendor Standards](#) are incorporated by reference herein. Vendor agrees to check [macysnet.com](#) for, and adhere to, all general and applicable category or channel-specific [Vendor Standards](#). Vendor’s unauthorized deviation from the [Vendor Standards](#) shall obligate Vendor to pay Purchaser and/or “**Purchaser Affiliates**” (defined as affiliates of Purchaser and subsidiaries of Macy’s, Inc.) costs (including attorneys’ fees), administrative charges and/or liquidated amounts from Vendor, as determined by Purchaser or set out in [routing guides](#) or other policies provided to Vendor. The parties agree that this is not intended to be a penalty, but rather a reasonable assessment of the damages that Purchaser will sustain due to Vendor violation.
3. **EDI TRANSACTIONS.** Purchase Orders for Product generally are effected by electronic data interchange or other transmission method approved by Purchaser (“**EDI**”). Vendor shall ensure that its EDI processing system or service is capable of sending and receiving EDI data in conformance with the system then utilized by Purchaser, all as specified in the [Vendor Standards](#). Vendor shall bear its own EDI-related costs and shall maintain security procedures sufficient to ensure that EDI transmissions are protected from improper access or disclosure. Except as specifically directed by Purchaser, use of paper documentation rather than EDI may subject Vendor to costs and administrative charges.

#### 4. COMPLIANCE WITH LAW AND PURCHASER REQUIREMENTS

- a. Purchaser is relying on Vendor's knowledge of and compliance with Applicable Law governing Vendor and its Product. Vendor guarantees all Product, including Vendor's development and delivery of same to Purchaser, is in strict compliance with all applicable federal, state and local statutes, decrees, ordinances, rules, regulations, requirements, executive orders, or other provisions of law then in effect ("**Applicable Law**"), of whatever kind and nature, which relate to the subject matter of all Product, including directives and guides issued by regulatory and enforcement bodies in the United States and any other country with jurisdiction over the Vendor or Product, as well as Purchaser's procedures and policies, whether posted on [macysnet.com](http://macysnet.com) or otherwise communicated to vendor and as updated from time to time. Such policies are incorporated herein by reference. Products shall be merchantable, fit and safe for any reasonably foreseeable purpose or use, free from defects in design, workmanship or materials, and shall conform to (i) all specifications set forth in this Agreement, (ii) any samples approved by Purchaser, and (iii) applicable industry standards.
- b. If any Products require a consumer warning under the law of the State of California known as Proposition 65 ("**Prop 65 Candidate Product**"), Vendor must comply with the following before accepting the Purchase Order: (i) advise Purchaser of same in writing, both to Vendor's primary buying contact and to the Prop 65 agent address provided in the relevant [Regulatory Alert](#) at [macysnet.com](http://macysnet.com); (ii) place warnings directly on all units of Prop 65 Candidate Products as may reasonably be offered for sale by Purchaser in or to consumers in California; and (iii) provide a digital copy of such warning for posting online for each Prop 65 Candidate Product.
- c. At Purchaser's request, Vendor shall provide Purchaser with a continuing guaranty, in the form recommended by the FTC, identifying the covered Goods and assuring that they comply with the relevant law. Such continuing guaranty shall be delivered to Purchaser in accordance with the [Notices](#) section in this Agreement.
- d. Vendor shall maintain a Toxics in Packaging Act Certificate of Compliance that covers each type of package or packaging component supplied, distributed, or sold hereunder, together with supporting documentation, for inspection and duplication upon Purchaser's request.
- e. Vendor represents and warrants that, as of the date such item is shipped to Purchaser, no item of Goods has been subject to recall or other corrective action by any agency having jurisdiction over the Goods, Vendor or Purchaser. If Goods are considered for a recall or other corrective action after they are shipped, Vendor shall inform Purchaser in writing promptly and, unless otherwise required by law, in no case less than five (5) business days before any press release or other public announcement of such corrective action.
- f. Vendor shall ensure that all Goods have been produced in compliance with all Purchaser procedures and standards, including the Vendor [Code of Conduct](#), as then posted on [macysnet.com](http://macysnet.com), including that no convict labor, forced labor, labor obtained by human trafficking and/or slavery, indentured labor under penal sanction, child labor,

or labor under unsafe working conditions will be used, directly or indirectly, in the manufacture (in whole or in part) of any Goods, including any components or parts thereof. Forced labor shall mean any work or service which is not performed voluntarily, but rather under threat of penal sanction or physical coercion; and child labor shall mean any work or service performed by a child under the age permitted by the laws, regulations or other requirements of the country in which the Goods are manufactured.

- g. Vendor represents and warrants that no Goods and no component of any Goods have been manufactured, sold or transported in violation of any restriction or sanction established by any law of the United States (inclusive of laws implemented by the Office of Foreign Assets Control). Countries under sanction from the United States may be found at the following link: <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>. In the event that Purchaser has made a request for confirmation of compliance with Applicable Law, no invoice pertaining to the Products shall become due or payable until such request is satisfied.
- i. It is an essential term of this Agreement that Purchaser may advertise, offer the Goods for sale, and sell or rent such Goods through any channel, including by electronic means and by providing the Goods to others who make international sales of same. Accordingly, Vendor shall notify Purchaser, in writing promptly after Vendor receives a Purchase Order but prior to shipment, if there are countries where Vendor or its partners knows it should not sell Goods for intellectual property or other legal reasons, or in which the Vendor knows the Goods would not be compliant with Applicable Law. Vendor acknowledges that Purchaser offers international shipping to more than 100 countries through its macys.com and bloomingdales.com web sites. For additional details on macys.com's international shipping program please visit <https://www.macys.com/international/context> and for details on bloomingdales.com's international shipping program please visit <https://www.bloomingdales.com/international/context>. Unless otherwise advised, Purchaser may also sell vendor samples at collective sample sales.

## 5. NONCONFORMING TENDERS.

- a. In the event Vendor tenders Goods that are defective or not, in whole or in part: (i) delivered timely; (ii) as represented or warranted; (iii) fit for the purpose for which they were sold; (iv) delivered in the quantity ordered; (v) in accordance with Applicable Law or Purchaser's specifications, or (vi) consistent with samples (in each case "**Nonconforming Tender**"), Purchaser may elect, as to any or all of the Goods in question and at Vendor's sole cost and expense, to: (a) accept the Goods (in part or in whole); (b) cancel the Purchase Order; (c) refuse the Goods (in part or in whole); (d) expedite shipment by shipping via air freight; (e) purchase substitute goods; (f) return to Vendor any or all remaining installment(s) of Goods (in part or in whole); and/or (g) deem the Purchase Order breached in its entirety. Regardless of which option(s) Purchaser elects, Purchaser may require Vendor to pay its associated costs, administrative charges, and estimated damages resulting from the Nonconforming Tender. Further, should Vendor fail to follow delivery instructions, whether as directly

communicated to vendor or set forth in a Purchase Order, the [Vendor Standards](#), or the [Macy's Transportation Office requirements](#) posted on [macysnet.com](#), Purchaser reserves the right to impose a reasonable charge for storage and/or additional handling, and for such additional expenses, costs and/or administrative charges as may be incurred by Purchaser due to such failure or to delivery delay. On request, Vendor shall prepare and provide tracking reports periodically by item or as otherwise directed by Purchaser.

- b. Vendor acknowledges and agrees that Purchaser either (i) posting such debits to Vendor's trial balance on macysnet.com within four (4) weeks of the later of its receipt of the Nonconforming Tender or discovery that the Goods were nonconforming, or (ii) otherwise posting or communicating such information to Vendor in writing (electronically or otherwise), shall constitute commercially reasonable notice of the Nonconforming Tender, notwithstanding that all or any part of the nonconformity may have been remedied before such action. Purchaser's receipt and/or acceptance of Nonconforming Tender shall not waive any Purchaser claim or right in respect of same and Purchaser hereby conditions any future acceptance of Goods on Purchaser's rights in this section.
- c. If Purchaser has cause to believe that any Goods contain defects or hazards that could create a risk of injury to any person or property, Purchaser may, at Vendor's sole cost and expense, destroy such Goods. This right shall apply to the entire Purchase Order unless Purchaser has reason to believe some portion of the Goods have not been impacted and such unaffected portion can be removed without burden to Purchaser. Upon Purchaser's request, Vendor shall, at Vendor's expense, locate, identify and recall such items, whether in the possession of Purchaser or Purchaser's customers. Upon recalling such items, Vendor shall, at Purchaser's option, repair or replace them or refund to retail purchasers the full retail price. Vendor shall reimburse Purchaser for any losses and any amount paid by Purchaser to consumers, plus all charges, costs and expenses incurred by Purchaser in respect thereof, including for warehousing, destroying, and otherwise handling and shipping such Goods to Vendor and/or repairing such Goods, as well as attorney's fees.
- d. If at any time Purchaser has reason to believe that the order or a portion thereof does or will not comply with the conditions or warranties set forth herein (express or implied), then Purchaser shall have the right to place Vendor's account on hold, and Vendor agrees to provide, within fifteen (15) days of Purchaser's request, adequate assurance as to such performance or compliance. If such evidence is not fully satisfactory to Purchaser, in Purchaser's sole discretion, then Purchaser may deem the Purchase Order to be breached by Vendor, and/or may cancel the Purchase Order.
- e. All of Vendor's obligations under these terms and conditions shall survive delivery and any inspection, retention, payment by Purchaser, resale, repacking, or payment by Purchaser customers, none of which shall be considered acceptance of the Goods so as to impair Purchaser's right to reject them or revoke any acceptance already made. Complaints or notices of defects in the Goods or of any other breach will be considered timely made by Purchaser if made within a reasonable time after discovery by

Purchaser. Failure of Purchaser to state a particular defect or ground upon rejection or return of Goods shall not preclude Purchaser from relying on same to establish a breach by Vendor.

- 6. TERMINATION BY PURCHASER.** Purchaser has the absolute right to cancel a Purchase Order for any reason with respect to Products that have not yet been provided by giving Vendor written notice of such cancellation. If this is prior to the Cancel Date and, prior to Purchaser's cancellation, Vendor has not breached any term or condition of the Purchase Order, then Purchaser, at its option, either shall (i) purchase such Goods that Vendor especially manufactured for Purchaser prior to Purchaser's cancellation, but only to the extent the Goods are not reasonably suitable for sale to any other buyer, or (ii) reimburse Vendor for reasonable and unrecoverable costs to the extent that such costs were actually incurred by Vendor in connection with such Goods as a result of Purchaser's cancellation, up to a maximum of fifty percent (50%) of Purchaser's purchase price for such Goods (defined as the "**Elective Termination Fee**" or "**ETF**"). Purchaser may terminate this Agreement without liability to Vendor if Vendor (a) sells, or offers to sell, a material portion of its assets, or (b) sells or exchanges, or offers to sell or exchange, or causes to be sold or exchanged, a sufficient amount of its stock that effects a change in the control of Vendor. Further, discontinuance of any portion of Purchaser or Vendor's business by reason of fire, flood, storm, earthquake, war or any other cause or causes beyond the control of that party shall give Purchaser the option of canceling all undelivered Goods, provided that reasonable notice is given to Vendor. If at any time Vendor, or an employee, owner, officer, or director thereof, (i) becomes the subject of a public scandal, (ii) takes an action, or (iii) makes a statement, any of which significantly degrades the reputation of Vendor or its brand or places Vendor in conflict with Purchaser's brand values (all as determined by Purchaser in its reasonable judgment), Purchaser shall have the option to immediately terminate this Agreement without any obligation to Vendor other than funds already paid.

**7. PAYMENT TERMS.**

- a. Vendor shall comply with the provisions of the Purchase Order concerning payment, correct payment instructions and invoices.
- b. With respect to Products, in no event shall payment accrue to Vendor prior to the later of (i) the date that the Products are delivered and accepted, (ii) the applicable "Ship Not Before Date," or (iii) the date that Purchaser receives Vendor's invoice with respect to such Products.
- c. Vendor acknowledges and agrees 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 Products.
- d. Purchaser and each Purchaser Affiliate shall have the right to transmit payment to Vendor for itself and on behalf of any of the others.
- e. Payments to Vendor may be made on a consolidated basis that nets the aggregate debits, credits and allowances of Purchaser and Purchaser Affiliates.

- f. Upon Purchaser's request, Vendor shall provide monthly reports, in a form that complies with Purchaser's instructions, to track Products ordered by Purchaser and/or Purchaser Affiliates.
8. **NO ADVERTISING.** Vendor shall not, without prior written consent, disclose the fact that Vendor has entered into this Agreement or use any trademarks or trade names of Purchaser or any Purchaser Affiliate in advertising or promotional materials.
9. **INDEPENDENT CONTRACTORS.** Vendor is an independent contractor. No provision of this Agreement shall create any other relationship between the parties. Accordingly, Vendor has no authority to obligate Purchaser, and Vendor retains exclusive control and discretion over the manner by which it performs its obligations hereunder.
10. **INDEMNIFICATION.** Vendor agrees to defend, indemnify and hold harmless Purchaser, Purchaser Affiliates, and Purchaser's employees, directors, officers, agents, successors, assigns, lessors, sub-lessors, property managers and customers including resale and rental customers (collectively, "**Indemnitees**"), from and against losses, legal or administrative proceedings, debts, demands, interest, actions, claims, liabilities, damages, penalties, fines, settlements, costs and expenses (such as attorney's fees incurred before or after provision of notice, including those expended because Vendor is Uncooperative, as defined below) and any other losses asserted against, incurred by, or imposed upon any Indemnitees arising out of any alleged act or omission of Vendor or Vendor's employees, directors, officers, agents, subcontractors, successors or assigns, or the purchase, possession, sale, resale, or use of Product, regardless of any allegations of Indemnitees' negligent acts, omissions or fault. This indemnity includes allegations of (i) injury to or death of any person or persons or damage to or impairment of any property regardless of where located; (ii) violation or breach of any of Vendor's representations, covenants or other obligations as set forth herein; (iii) infringement of any design, patent, trademark, copyright, right of privacy or similar right of any person or entity; (iv) misrepresentation or breach of Product warranty (express or implied); (v) any recall of Goods, whether voluntary or involuntary, including reimbursement of all costs and expenses as may be required of Indemnitees to assure compliance with all Applicable Law; or (vi) any content, information, or equipment designed, sourced or provided, in whole or in part, by Vendor. Indemnitee shall have the right to select counsel representing Indemnitee unless provided by an insurer, in which event counsel shall be reasonably satisfactory to Indemnitee, all as confirmed in writing. Vendor may not settle any claim, action or other proceeding subject to indemnity without Indemnitee's written consent and Indemnitee may, at its sole option, require separate defense of same. If Purchaser sends Vendor a written communication tendering a matter for Vendor indemnification and defense and Vendor does not confirm such obligations and advise its proposed counsel for Purchaser within five business days of delivery (delivery shall be deemed immediate for e-mail communication), or if vendor at any time before resolution of the Impairment fails to



respond to communication from Purchaser or counsel for more than four business days after delivery, vendor is deemed **“Uncooperative.”** Vendor shall also pay and reimburse the Indemnitee(s) (or their insurers) for the fees, expenses, and costs of any action taken to enforce defense or indemnity obligations hereunder.

- 11. INSURANCE.** Vendor shall secure and maintain appropriate products and contractual liability insurance coverage in adequate amounts, written on an occurrence basis, on ISO Form CG-00-01-07-98 or its substantial equivalent, and shall provide coverage on a primary basis and not be contributory with or excess over any other insurance or self-insurance available to Purchaser. “Adequate amounts” includes commercial general liability coverage of not less than \$1,000,000 per occurrence, general aggregate coverage of not less than \$5,000,000, personal and advertising injury coverage of not less than \$1,000,000, and products/completed operations aggregate coverage of not less than \$1,000,000. All such insurance coverage shall also include 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. No insurance coverage shall contain any exclusion, limitation or endorsement 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 under the Purchase Order, including in respect of Products/Completed Operations coverage and indemnification. Such insurance coverage shall include Purchaser as an additional insured party (**“Additional Insured”**). Such insurance coverage shall also provide for the investigation, defense and satisfaction (by settlement or otherwise), at no cost to the Additional Insureds, of any claims, suits, liabilities, damages, costs and expenses, asserted against or incurred by Additional Insured(s). Upon request, Vendor shall promptly furnish Purchaser and/or any Indemnitee with certificates evidencing such insurance coverage or the actual endorsements and/or policies, as requested. Vendor shall bear its own insurance and insurance-related expenses and its liability shall not be limited to its insurance coverage. Vendor represents and agrees that any subcontractors retained by Vendor will also name Purchaser as an Additional Insured in their policies.
- 12. SUPPLIER OF VENDOR VIOLATION OF LAWS.** If any supplier of Vendor violates any Applicable Law or takes other action in connection with its provision of the Product as may affect Purchaser’s costs (with respect to the Product or otherwise), but Purchaser is precluded from suing, or lacks standing to sue such supplier, then, (i) on reasonable request, Vendor shall pursue diligently an appropriate action at law to recover Purchaser’s damages, and (ii) whether or not so requested, Purchaser may recover any damages sustained as the result of such violation of law from Vendor’s recovery in action against the supplier.
- 13. CHANGE IN SPECIFICATIONS.** Purchaser may reasonably change its specifications for Product by notice to Vendor and such notice shall be effective upon receipt as to future production of such Product. Vendor may not change any Purchaser specifications without Purchaser’s prior written approval.

**14. CONFIDENTIALITY.**

- a. The following shall be deemed the confidential property of Purchaser (“**Confidential Information**”): all non-public information provided or disclosed to Vendor at any time with respect to the Product and/or any Purchaser campaign, plan, operation or facility (including 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), pricing, sales, customers, assets and liabilities, together with any other non-public material that Vendor becomes aware of during the course of its performance. 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 the Purchase Order or this Agreement) any Confidential Information 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 Confidential Information.
- b. Vendor acknowledges and understands that it may receive, by or on behalf of Purchaser, non-public personal information that identifies, relates to, describes or could reasonably be used to identify, relate to or describe any natural person or household (“**Purchaser PI**”). Purchaser PI may include, without limitation: (i) first and last name, home or other physical address, telephone number (including mobile telephone number), fax number, email address, social security number, credit card numbers, financial account information, signature, driver’s license information, government issued identification card information, photographic image, biometric information, dates of birth and mother’s maiden name, political or religious affiliations, professional or educational information, physiological, biological or behavioral characteristics, sleep, health or exercise data containing identifying information, audio, electronic, visual, thermal, olfactory or other similar information; (ii) information or data collected directly from a person’s interaction with an application’s user interface (e.g. name, address, date of birth etc.), geolocation data or other electronic information; (iii) information or data that is gathered indirectly, such as IMEI, UDID, MAC address, IP address, cookie ID etc.; (iv) information or data gathered about a person’s purchasing behavior, such as purchase and transactional history or tendencies, location data, web and/or mobile browsing data, web search history or the applications used that is linked to a unique profile; (v) inferences that would enable a profile about a consumer reflecting the consumer’s preferences, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes; and (vi) any other data elements restricted under Applicable Law. In the event, and to the extent that, Purchaser does provide Vendor (or Vendor otherwise gains access to) Purchaser PI, such information, no matter how obtained, shall be deemed Confidential 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 shall not, in any event, collect any customer or personal information except in compliance with Applicable Law and with Purchaser’s prior written approval, and then may neither otherwise use nor disclose any Purchaser PI to any person or entity other than Purchaser unless pursuant to a separate written agreement executed by a Purchaser authorized signatory, and in all cases in compliance with Applicable Law. Vendor will not otherwise retain, use, disclose, modify, transform, share or sell Purchaser PI. Vendor



agrees to map its use of each element of Purchaser PI to the following five categories used by Purchaser in disclosing its data handling and sharing practices: (i) advertising, promotions and marketing; (ii) internal operations; (iii) shopping and fulfillment of products and services; (iv) fraud prevention, security and compliance; and (v) support for credit card or banking operations. Vendor certifies that it understands and will comply with the forgoing restrictions and will use and handle all Purchaser PI in compliance with all Applicable Laws, including without limitation, the California Consumer Privacy Act of 2018 (the “CCPA”). Without limiting the foregoing, upon receiving a request from Purchaser to delete specified elements of Purchaser PI or any category of mapped data under the above categories related to an individual, household or device, Vendor promptly will delete such information related to an individual, household, device or category in accordance with Purchaser’s policies or the requirements of the CCPA and send certification of such deletion to Purchaser. Upon termination of this Agreement, Vendor also will either delete or transfer all Purchaser PI to Purchaser or its designee (as directed by Purchaser) and provide timely certification of such action to Purchaser. Vendor further agrees that Purchaser has the right to unilaterally amend the requirements of this section in the event that state or federal legislation containing additional or different standards related to the handling of PI is enacted, and such amendments shall automatically take effect sixty (60) days after such notice is provided (or sooner where required to comply with law). Vendor shall ensure that if it shares Purchaser PI with any third party for purposes of performing services under this Agreement, it shall require each such third party to agree to the foregoing terms. In respect of all Confidential Information, specifically including all Purchaser PI, Vendor shall institute and maintain reasonable procedures and precautions against unauthorized use, access or disclosure and, in the event thereof, immediately shall report such event to Purchaser and provide assistance to Purchaser as requested, including by providing any required notification with respect thereto, at Vendor’s expense.

- c. Upon request from Purchaser or upon termination of the Agreement, all Confidential Information and Purchaser PI shall be returned to Purchaser or securely disposed of through destruction, whichever Purchaser elects. If Vendor disposes of Confidential Information or Purchaser PI, regardless of the form of such information (paper, magnetic, computer storage media etc.), then Vendor shall dispose of such Confidential Information or Purchaser PI by taking reasonable measures to protect against unauthorized access to or use of such information. Disposal of Confidential Information or Purchaser PI as ordinary garbage without first shredding, burning, pulverizing, erasing, or otherwise destroying the material is prohibited.

**15. DISPUTES AND REMEDIES.** Without limiting any party’s rights hereunder, in the event of a dispute under this Agreement, the parties shall endeavor to reach an amicable resolution and if unable to do so within thirty (30) days after receipt of a notice of dispute given by one party to the other, either party may seek any remedy available to it subject to the provisions of this Agreement. As to disputes concerning any amount invoiced by Vendor, Vendor shall provide to Purchaser, promptly after any Purchaser request therefore, all documents and/or information as Purchaser reasonably requests, including written proof of delivery. Vendor acknowledges that Purchaser may dispute any invoice, in whole or in part, and may

withhold the disputed amount until resolution. Purchaser's failure to pay such disputed amount shall not be a breach of the Purchase Order or subject Purchaser to any liability, charge or penalty. No action by the Vendor for breach of this Agreement may be commenced more than twelve (12) months after the accrual of the cause of action. Any action by Purchaser relating to this Agreement is not so limited and shall be governed by the applicable statute of limitations. Vendor acknowledges and agrees that the above limitation of time in which to commence an action is reasonable.

- 16. DEFAULT.** Vendor's failure to comply with any term, covenant, or obligation in this Agreement shall constitute a breach that, if not cured within five (5) days of receipt of Purchaser's notice of breach or not curable in Purchaser's reasonable judgment, shall constitute a Vendor default and entitle Purchaser to assert any right granted Purchaser by this Agreement and/or by law or in equity, including the provisions of the Uniform Commercial Code. Nothing contained in this Agreement confers upon Vendor a right to cure a breach without Purchaser's written consent. Any of the following likewise shall constitute Vendor default: (i) Vendor or its external auditors issue a "Going Concern" warning; (ii) Vendor making a general assignment to benefit its creditors; (iii) commencement by or against Vendor of any proceeding seeking to adjudicate it as bankrupt or insolvent; (iv) commencing any action by or against Vendor seeking liquidation, reorganization, adjustment or other relief under any law relating to bankruptcy or reorganization; (v) the transfer of substantially all of Vendor's business or assets; or (vi) Vendor's failure or delay in performing an obligation even where the delay is beyond Vendor's reasonable control, since 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 Vendor's performance of its obligations, Purchaser, in its sole discretion, may demand from Vendor such adequate assurances of future performance as Purchaser deems appropriate and, in the event that Vendor either fails to timely (for assurance purposes, absent specific reasons for urgency, "timely" shall be no later than five business days of the demand) provide such adequate assurance to Purchaser's reasonable satisfaction or otherwise fails to perform, Purchaser, in its sole discretion, may suspend its own performance or terminate this Purchase Order, in whole or in part. In such case, Purchaser will be entitled to all rights and remedies in law or in equity.
- 17. LIMITATION OF DAMAGES.** Purchaser shall not be liable to Vendor for any special, incidental, exemplary or consequential damages arising from or as a result of any transaction hereunder even if Purchaser has been advised of the possibility of such damages.
- 18. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its doctrines regarding conflicts of law. Any action or proceeding concerning this Agreement shall be brought in a court in the State of New York and within the County of New York to be resolved individually, without resort to any form of class action. Both parties waive any complaint as to the convenience of this forum. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THIS WAIVER OF TRIAL BY JURY PROVISION IS A

MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

- 19. RECORDS, AUDIT.** Vendor shall maintain sufficient records to verify all sums pertaining to the Purchase Order and shall retain such records for a period of three (3) years from the end of this Agreement. Purchaser shall have the right to inspect and audit, without advance notice and during normal business hours, Vendor's records and documents as to Vendor's sales to Purchaser and/or any Purchaser Affiliate, to ensure Vendor compliance with the provisions of this Agreement, including to ensure that Vendor is complying with product specifications and making all payments required to be made by Vendor hereunder in respect of advertising, staffing support or otherwise.
- 20. RIGHT OF OFFSET.** Purchaser may offset any expense, cost, fee, or other amount to be paid or reimbursed by Vendor pursuant to the terms and conditions of this Agreement ("**Vendor Liability**") by deducting such amounts from any amounts due Vendor. When grounds for insecurity arise with respect to Vendor's performance of, or ability to perform, its obligations under this Agreement, Purchaser has the right to offset any anticipated Vendor Liability until Purchaser receives adequate assurance (to be determined by Purchaser in its sole discretion) of Vendor's performance or ability to perform its obligations under this Agreement.
- 21. NON-RECEIPT OF GOODS.** Any claims for non-payment of an invoice based on non-receipt of Goods by Purchaser or non-receipt of Goods returned to Vendor by Purchaser (which may involve a carrier loss) will be deemed waived by Vendor unless notice of such claim is sent to Purchaser at least ninety (90) days prior to the expiration of the applicable carrier time limitation on filing proof of loss claims. As to disputes concerning any amount invoiced by Vendor, Vendor shall provide to Purchaser, promptly after any Purchaser request therefor, all documents and/or information as Purchaser reasonably requests, including written proof of delivery.
- 22. CONSTRUCTION.** For purposes of this Agreement, except as a specific context may otherwise require:
- a. the term "party" refers to Vendor or Purchaser;
  - b. the words "include", "including" and like terms are to be construed as inclusive and without limitation;
  - c. every reference to "Purchase Order" or "Agreement" shall be deemed to include the Macy's [Vendor Standards](#), with all schedules, exhibits, attachments and associated material as any of them may be amended from time to time, all as effective as of the date posted on [macysnet.com](#), all of which are deemed to be incorporated herein;
  - d. references to days, months, and quarters are to be construed as referring to calendar days and months;

- e. no provision of this Agreement shall be construed against a party by virtue of the fact that such party drafted such provision or the Agreement as a whole;
- f. “hereof,” “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Purchase Order; and

**23. NOTICES.** All notices given shall be in writing and shall be delivered by hand or sent by receipted courier, U.S. mail (registered or certified with return receipt requested if addressed to Purchaser) or via e-mail as long as notice is also sent via another approved notice method. If to the Purchaser, notice shall be delivered to the attention of:

Chief Legal Officer  
Macy’s, Inc.  
7 West Seventh Street  
Cincinnati, OH 45202

unless otherwise required by Purchaser in its written instructions. It is agreed by the parties that any consent or approval by Purchaser must be given in writing and signed by Purchaser’s authorized representative in order to be effective. **The COVID-19 pandemic has made it difficult for many to process mail or courier communications. Notwithstanding anything to the contrary in this section, notices via e-mail are deemed sufficient provided they are sent to an active e-mail address.**

**24. AMENDMENTS.** This Agreement may be amended or modified by Purchaser via postings to [macysnet.com](http://macysnet.com); any other amendment or modifications must be in a writing signed by the parties and no term hereof may be amended or waived by an inconsistent Vendor act.

**25. WAIVERS.** Neither past custom or practice, Purchaser’s acceptance of performance, nor failure to enforce any provision hereof shall be deemed a waiver of or consent to Vendor’s breach. Purchaser’s waiver of or consent to one breach shall not be construed as a waiver of or consent to any future breach.

**26. SURVIVING OBLIGATIONS.** Except as to obligations theretofore incurred or that are required to be performed thereafter, upon the expiration or termination hereof, neither party shall have any further obligation to the other; provided that Vendor’s warranties and guarantees will survive. Without limitation, Purchaser Property, Indemnification, Insurance, Confidentiality, Remedies, Governing Law, Records Audit, and this section shall survive the expiration and termination of this Agreement.

**27. ASSIGNMENT; BENEFICIARIES.** Purchase Orders are personal as to Vendor and Vendor may not assign any interest nor obligation thereunder without Purchaser’s written consent. Any assignment without Purchaser’s written consent shall be deemed null and void, and a breach of this Agreement. Purchaser shall not be obligated to accept performance of any Vendor obligation from any party other than Vendor. Specifically, Vendor agrees and acknowledges, on its own behalf and on behalf of any person or entity as may assert a claim on its behalf or derived from it, that this Agreement sets forth all rights and remedies to which Vendor (and such person or entity that has derived a right from or

through Vendor) may be entitled. Any change in control of Vendor shall be deemed an attempted assignment. All Purchaser Affiliates shall be deemed to be third party beneficiaries of this Purchase Order and Agreement. Purchaser and each Purchaser Affiliate also shall be deemed to be third party beneficiaries of any Vendor agreement with any third party regarding the production or distribution of the Goods or any component thereof.

- 28. SEVERABILITY.** The unenforceability or illegality of any provision of this Agreement shall not render any other provision unenforceable, null or void as long as the provisions remaining enforceable are sufficient to constitute a legally binding agreement, which shall be enforced and interpreted in accordance with the parties' intentions.
- 29. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties as to its subject matter and 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 Agreement. This provision is applicable in all circumstances, without regard to whether a Purchase Order establishes a new transaction and/or confirms an existing arrangement.
- 30. COUNTERPARTS.** The exchange of counterpart copies of this Agreement and of signature pages by electronic mail in "portable document format" form, or by any other electronic means intended to preserve the original document, shall constitute effective execution and delivery of this Agreement. Electronic copies of this Agreement shall be admissible to the same extent as the original, and the Parties hereby waive any requirement that an ink-on-paper original of this Agreement be produced.

**[END OF DOCUMENT]**