

## Section- 9 Terms and Conditions

The following Terms and Conditions are part of the **Vendor Standards Manual** ("VSM") and are fully incorporated herein. Please note that once executed by Vendor, the **VSM** including but not limited to these Terms and Conditions, shall apply and shall continue indefinitely until amended or terminated.

1. **Definitions:** As used herein, the following terms shall have the following meaning: (a) "Order" means a purchase order or an order effectuated through Electronic Data Interchange transmission (EDI) or any other means, which orders shall be deemed to include, in either event, these Terms and Conditions and (b) "Merchandise" refers to the goods, products, packaging, promotional materials including advertising, supplies, parts, assemblies, specifications, services or other items constituting the subject matter of the Order which are to be furnished by the Vendor to Amscan, Inc, Party City Corporation or their franchisees, affiliates or subsidiaries hereunder. References to "THE COMPANY" include Amscan, Inc., Party City Corporation, and their franchisees, and any subsidiaries and affiliated companies.

2. **Warranties:** Vendor represents and warrants to THE COMPANY, in addition to all warranties expressed or implied at law, that the Merchandise and its use, importation, design, construction, assembly, production, shipment, sale, packaging, labeling, packing, advertising, instructions and warnings or lack thereof and other printed matter furnished or authorized by Vendor, shall (a) be free from defects in design, workmanship and/or materials, including, without limitation, such defects as could create a hazard to life or property; (b) be suitable for end use; (c) be manufactured, packed for shipment, marked with the country of origin or other information required by law or regulation and where required, be registered, all in accordance with applicable federal, state and local laws, and the laws of any United States Commonwealth or territory where THE COMPANY does business, including the Commonwealth of Puerto Rico, and all orders and regulations promulgated thereunder; (d) (i) not infringe or encroach upon any party's personal, contractual or proprietary rights, including patent, designing trademark, tradename, servicemark, copyright, right of privacy or publicity or trade secret rights; collectively hereafter ("Proprietary Rights") or (ii) not have been or be the subject of any allegation by any party alleging violation of such party's Proprietary Rights; (e) not violate or breach any agreement that Vendor may have with a manufacturer or distributor; (f) conform to all specifications and other descriptions set forth or incorporated in the Order and all articles accepted by THE COMPANY as merchandise samples; (g) possess all performance qualities and characteristics claimed in advertisements or representations made, issued or authorized by Vendor; (h) be in conformity with the Federal Food, Drug and Cosmetics Act, the Federal Trade Commission Act or any other federal, state or local law, and the laws of any United States Commonwealth or territory where THE COMPANY does business, including the Commonwealth of Puerto Rico, and all orders and regulations promulgated thereunder; (i) be properly stamped, tagged, labeled, or marked with such information as may be required by any applicable law, regulation or order or by THE COMPANY; (j) be well within any expiration date indicated on the packaging of the Merchandise; (k) have been stored under proper conditions to preserve the quality of the Merchandise; and (l) meet all applicable requirements of all applicable United States federal, state and local laws and regulations and of all applicable laws and regulations of jurisdictions outside the United States . Vendor also represents and warrants that (m) the weights, measures and sizes of all Merchandise shall be as represented and conform to all standards, regulations and requirements of any federal, state or local governmental authorities having jurisdiction, and any United States Commonwealth or territory where THE COMPANY does business, including the Commonwealth of Puerto Rico; (n) the prices, terms and conditions of sale hereunder and any discount, rebate or allowance for advertising or otherwise granted by Vendor in connection herewith are not in

violation of the Robinson-Patman Act and are in compliance with all applicable laws and regulations; and (o) no forced labor or child labor shall be or was utilized in connection with the manufacture of the merchandise. Vendor's representations and warranties herein shall survive the delivery of Merchandise to THE COMPANY and any resale of Merchandise by THE COMPANY.

**3. Safety Tests:** Vendor, at its sole cost and expense, shall perform, or cause to be performed, all tests on the Merchandise required by the Customer Product Safety Commission and any other federal, state and local laws, or the laws of any United States Commonwealth or territory where THE COMPANY does business, including the Commonwealth of Puerto Rico, and shall maintain for a period of not less than three (3) years certificates indicating that all applicable tests have been administered and passed. Such tests shall be conducted by Bureau Veritas laboratories. Vendor shall make available, and at THE COMPANY's request shall furnish, to THE COMPANY copies of such certificates and shall permit THE COMPANY or any person or persons authorized by THE COMPANY to inspect and make copies of all records maintained by Vendor in connection with such tests. In the event Vendor does not test its products, THE COMPANY may test those products and either withhold payment as a result of such testing or charge back the cost of such testing to the Vendor.

**4. Registration and License Numbers:** Vendor shall obtain and provide to THE COMPANY any and all registration numbers, license numbers, or the like, required by any federal, state, local, foreign, provincial or territorial governmental agency or authority having jurisdiction over the Merchandise type in question, the sale of such Merchandise, and/or any claims made regarding the Merchandise or any of its qualities. In the event vendor is working only with Amscan, Inc., the registration numbers, license numbers and the like shall be sent to Amscan, Inc., 80 Grasslands Road, Elmsford, New York 10523 Attention: Vendor Relations). In the event vendor is working only with Party City Corporation, registration numbers, license numbers and the like shall be sent to Party City Corporation, 25 Green Pond Road, Suite #1, Rockaway, NJ 07866 Attention: Vendor Relations. In the event vendor is working with both Amscan, Inc. and Party City Corporation, registration numbers, license numbers and the like shall be sent to Amscan, Inc., 80 Grasslands Road, Elmsford, New York 10523, Attention: Vendor Relations.

**5. Material Safety Data Sheet:** Vendor shall provide THE COMPANY a Material Safety Data Sheet ("MSDS") as required pursuant to the Occupational Safety and Health Act and any other federal, state, or local law, regulation or order prior to the delivery of Merchandise. An MSDS, if required, shall also be included with the first delivery of any Merchandise to each of THE COMPANY's Stores. In the event vendor is working only with Amscan, Inc., the registration numbers, license numbers and the like shall be sent to Amscan, Inc., 80 Grasslands Road, Elmsford, New York 10523 Attention: Vendor Relations). In the event vendor is working only with Party City Corporation, registration numbers, license numbers and the like shall be sent to Party City Corporation, 25 Green Pond Road, Suite #1, Rockaway, NJ 07866 Attention: Vendor Relations. In the event vendor is working with both Amscan, Inc. and Party City Corporation, registration numbers, license numbers and the like shall be sent to Amscan, Inc., 80 Grasslands Road, Elmsford, New York 10523, Attention: Vendor Relations.

**6. Terms must be in Writing:** No terms or conditions in any acceptance, acknowledgment, invoice or other document submitted by Vendor that are in conflict with, different from, or in addition to these Terms and Conditions, nor any modification of the Order, shall be binding upon THE COMPANY unless agreed to in writing by a duly authorized representative of THE COMPANY.

**7. Purchase Order:** (a) An Order, when in the form of a written purchase order, shall constitute an offer on the part of THE COMPANY upon these Terms and Conditions and shall

become a binding contract between THE COMPANY and Vendor upon Vendor's acceptance of the Order by:

- (1) signing one copy of the Order and returning it to THE COMPANY or
- (2) returning a signed written confirmation of the Order to THE COMPANY; or
- (3) delivering to THE COMPANY, in accordance with the terms and conditions set forth in the Order, all or any part of the Merchandise order; or
- (4) allowing ten (10) days to lapse from the time the Order is received by Vendor, neither accepting the Order in the manner indicated above nor giving THE COMPANY written notice of rejection of the Order.

(b) An Order, when in the form of an EDI transmission or email, shall constitute an offer on the part of THE COMPANY upon these Terms and Conditions and upon any terms and conditions indicated in the EDI transmission and shall become a binding contract between THE COMPANY and Vendor upon Vendor's acceptance of the Order by:

- (1) delivering to THE COMPANY, in accordance with the terms and conditions as set forth in the Order, all or any part of the Merchandise ordered; or
- (2) electronically acknowledging receipt of the Order coupled with failure to reject the Order within two (2) business days following its receipt; or
- (3) allowing ten (10) days to lapse from the time the Order is received by Vendor, neither accepting the Order in the manner indicated above nor giving THE COMPANY written notice of rejection of the Order.

8. **Prices:** The prices specified in the Order are not subject to any additional charges for packing or preparation for shipment due to increased costs of operation, or because of any taxes or excises levied on processors, manufactures, wholesalers or otherwise. The Order shall not, without written authorization from THE COMPANY, be fulfilled at higher prices than specified therein, or, if the Order is not priced, at prices higher than last charged or quoted to THE COMPANY for Merchandise described therein. Vendor agrees that any price reduction made to the Merchandise described in the Order prior to the delivery of such Merchandise to THE COMPANY shall be applicable to the Order. Whenever price is dependent upon cubic density, such density shall be specified by Vendor.

9. **Changes to an Order:** THE COMPANY may at any time make changes in written, electronic or facsimile form to any Order, including changes in the drawings or specifications, methods of shipment, warranties, packing, or time or place of delivery at any time prior to 30 days before the start ship date for the Merchandise. If such changes result in an increase or decrease in cost of, or time required for the performance of the Order, an equitable and reasonable adjustment shall be made in the price, delivery schedule or both. If such changes result in an increase in cost or time which is unacceptable to THE COMPANY, then THE COMPANY in its sole discretion may cancel its request for such changes.

10. **Timeliness:** Time is hereby made of the essence on the Order. If delivery of Merchandise is not completed by the date set by THE COMPANY, THE COMPANY reserves the right, without liability and in addition to its other rights and remedies at law, in equity or under the terms of the Order, to purchase elsewhere and hold Vendor liable for any additional loss, cost, damage or expense incurred thereby. Vendor shall pay any loss, cost, damage or expense resulting from the untimely receipt of the Merchandise ordered. Vendor shall notify THE COMPANY immediately if it is unable to ship timely. THE COMPANY shall have the right to refuse any goods with untimely delivery and to cancel the balance of the Order for any part of the goods due after untimely delivery of any installments. By accepting the untimely delivery of any installment, THE COMPANY shall not be bound to accept future shipments nor be deprived of its right to return Merchandise already accepted nor to claim damages for untimely delivery.

11. **Order Postponement:** THE COMPANY shall have the right to require Vendor to postpone shipment of Merchandise or suspend work covered by the Order and Vendor shall take all reasonable steps or minimize costs during such suspension. Equitable adjustment shall be made to the price, delivery schedule or other provisions affected by the suspension, provided that the claim for equitable adjustment is made within thirty (30) days after THE COMPANY directs the continuation of the work.

12. **Order Termination:** (a) THE COMPANY may terminate an Order, or any part thereof, by notice to Vendor under any of the following circumstances:

- (1) If Vendor fails to comply with any provisions of the Order.
- (2) If Vendor becomes insolvent or makes a general assignment for the benefit of creditors or files or has filed against it a petition of bankruptcy or for reorganization, or pursues any other remedy under any other law relating to the relief for debtors or in the event a receiver is appointed for Vendor's property or business.
- (3) If THE COMPANY receives notice of an allegation of Proprietary Rights infringement or believes that there may be an infringement of Proprietary Rights regarding the merchandise that is the subject matter of the Order.

In the event of such termination, in addition to all other rights and remedies THE COMPANY may have at law, in equity or under these Terms and Conditions, THE COMPANY may purchase or manufacture similar Merchandise and/or require Vendor to transfer title and deliver to THE COMPANY any and all property produced or procured by Vendor under the Order and Vendor shall be liable to THE COMPANY for any excess cost to THE COMPANY.

- (b) In addition to THE COMPANY's right to terminate an Order for cause pursuant to Paragraph 12 (a) above, THE COMPANY may terminate an Order in whole or in part at any time upon notice to Vendor. On receipt by Vendor of such notice, Vendor shall, to the extent specified therein, stop work thereunder and the placement of work with subcontractors, terminate work under subcontracts outstanding thereunder, and take any necessary action to protect property in Vendor's possession in which THE COMPANY has or may acquire an interest. In such event, THE COMPANY shall pay to Vendor the amounts due for supplies delivered and accepted or services completed in accordance herewith prior to the effective date of termination.
- (c) Any termination by THE COMPANY whether for cause or otherwise, shall be without prejudice to any claims for damages or other rights of THE COMPANY against Vendor.
- (d) Vendor shall continue performance of the Order to the extent not terminated.

13. **Right to Refuse Merchandise:** THE COMPANY shall have the right to refuse Merchandise not in accordance with specifications or industry standard, or which is different in quality or quantity from that ordered, or which is shipped otherwise than as specified under the Order or which is believed by THE COMPANY to violate a third party's Proprietary Rights or is alleged to violate a third party's Proprietary Rights. THE COMPANY may, at its sole discretion, either return rejected Merchandise or hold same at Vendor's risk and expense and may, in either event, charge the Vendor with the cost of transportation, shipping, unpacking, examining, repacking, storing, reshipping and other like expenses. If Vendor fails to accept Merchandise returned by THE COMPANY, then THE COMPANY shall have the right to dispose of such Merchandise by any

means. If within thirty-six (36) days after a request by THE COMPANY for direction regarding disposition of rejected Merchandise, Vendor does not respond to THE COMPANY, THE COMPANY shall have the right to dispose of the Merchandise by any means. Acceptance of any prior shipments contrary to the Order shall not be considered a waiver of THE COMPANY's right to return any or all of the Merchandise and receive full credit therefore. Authorization for substitution of style, color, size, quantity or a combination thereof, is permitted only upon the written, signed and dated consent of THE COMPANY. Any claims for defective Merchandise, shortages, returns, damages, or other claim of set off asserted as a result of Vendor's failure to comply with these Terms and Conditions made by THE COMPANY will be charged back to Vendor and the amount thereof deducted from payments to be made to Vendor or, alternatively, will be promptly refunded to THE COMPANY.

14. **Right to Return Merchandise:** THE COMPANY may at any time after delivery of the Merchandise (and whether or not the same has been accepted by THE COMPANY) return all or part of the Merchandise if any part is found to be in a damaged or defective condition if believed by THE COMPANY to violate a third party's Proprietary Rights, or if alleged to violate a third party's Proprietary Rights. Vendor shall refund to THE COMPANY in full the price paid by THE COMPANY for such returned Merchandise. Any Merchandise so returned shall be at Vendor's risk and expense.

15. **Right to Cancel:** In addition to any other remedies available to THE COMPANY under this Agreement or applicable law, upon Vendor's breach of this agreement or any Order, THE COMPANY at its option and without liability to Vendor, may forthwith cancel any unshipped portion of any Order.

16. **Advance Shipment:** If THE COMPANY accepts any advance shipment (other than requested by it) under any Order, payment terms on such shipment shall be computed from the prescribed shipping date. Terms on shipments not in advance shall begin when Merchandise is received by THE COMPANY, except that invoices for Merchandise received on and after the 25<sup>th</sup> of the month will be considered received as of the first of the following month.

17. **Shipping Charges:** Vendor shall pay all charges for packing, crating and shipping unless THE COMPANY expressly agrees to pay such charges.

18. **Freight on Board THE COMPANY:** Except for Freight on Board (F.O.B.) origin Orders, title to the Merchandise ordered hereunder, as well as all risks of loss therefore, shall remain in Vendor until the Merchandise reaches the directed point of destination and is signed for by THE COMPANY's authorized representative. For F.O.B. origin Orders, title and risk of loss shall remain in Vendor until the Merchandise is received by the carrier designated by THE COMPANY.

19. **Additional Expenses:** Unless THE COMPANY otherwise agrees in writing, any additional expense resulting from any delay, partial shipment, early shipment, change of routing, variation of cubic density, change of pack or other failure by Vendor to comply with the terms of this Agreement or the applicable Order shall be paid by Vendor.

20. **Right to Deduct Monies Owed:** THE COMPANY reserves the right to deduct from any amount due Vendor for Merchandise ordered any amount Vendor owes THE COMPANY with respect to any claims of any nature whatsoever in favor of THE COMPANY against Vendor, whether or not related to the Order and whether now existing or hereafter arising, and any assignee of the Vendor's rights to payment hereunder shall be subject to THE COMPANY's rights under this paragraph.



21. **Right to Withhold Payment:** THE COMPANY reserves the right to withhold any payments due Vendor, without penalty or forfeiture, until all disputes whether or not related to the Order and whether or not existing or arising in the future between THE COMPANY and Vendor, are settled.

22. **Bankruptcy:** Any sums payable to Vendor shall be subject to all claims and defenses of THE COMPANY, and THE COMPANY may deduct and set off against any such sums all present and future indebtedness of Vendor to THE COMPANY. In addition to the foregoing set off rights between THE COMPANY and Vendor, THE COMPANY shall be entitled to set off all obligations it owed Vendor, Vendor's divisions, departments, subsidiaries, affiliates and other related entities (the "Related Entities") against any claims THE COMPANY may have against any or all of the Related Entities, as if: (i) a debt existed from THE COMPANY to the Related Entities or any one of them, (ii) THE COMPANY had a claim against the Related Entities or any one of them, and (iii) the debt and the claim are mutual obligations. For the purpose of this section, Vendor and each of the Related Entities expressly consent to the set off rights afforded herein as they affect the Related Entities. The parties further agree that these set off rights will be applicable and fully enforceable in the event Vendor or any of the Related Entities commence a voluntary bankruptcy proceeding or become the subject of an involuntary bankruptcy petition under Title 11 of the United States Code. THE COMPANY shall provide a copy of the deduction statements for debt it has taken against the Vendor's account as a result of any deductions or set offs. Vendor shall be deemed to have accepted each such deduction or set off unless Vendor, within 90 days of receipt of the deduction statement notifies THE COMPANY in writing as to why a deduction or set off should not be taken and provides documentation of the reason(s) given. THE COMPANY shall not be liable to Vendor for any related interest of late charges pending resolution of the contested set off. In the event that either a voluntary or involuntary bankruptcy petition is commenced by or against Vendor and/or any of the Related Entities under the Title 11 of the United States Code, or under any other federal or state law governing the reorganization, liquidation, assignment for the benefit of creditors, or other similar disposition of Vendor or the Related Entities, Vendor and the Related Entities unconditionally and irrevocably consent, to the relief from the automatic stay so as to allow THE COMPANY to exercise its rights and remedies under the Agreement, including but not limited to exercising its right of set off as set forth herein. In such event, Vendor and the Related Entities hereby agree that they shall not, in any manner, oppose or otherwise delay any motion filed by THE COMPANY for relief from the automatic stay. The provisions of this section constitute a material inducement for Vendor and THE COMPANY to enter into this agreement.

23. **Intellectual Property:** All Merchandise, Proprietary Rights and Confidential Information which are supplied by THE COMPANY or which are distinctive of THE COMPANY's private label or licensed label merchandise or which contain any Proprietary Rights of THE COMPANY or which are created at the request of THE COMPANY (collectively "Special Features") shall be the property of THE COMPANY and shall be used by Vendor only for THE COMPANY for THE COMPANY's benefit. All goodwill accruing shall be for and inure to the benefit of THE COMPANY. All intellectual property associated with Merchandise created by Vendor which includes Special Features, THE COMPANY Proprietary Information or which was created at the request of THE COMPANY shall be and hereby is assigned to THE COMPANY. THE COMPANY may use Special Features as it sees fit on or with respect to goods manufactured by others. Merchandise with Special Features which is not delivered to THE COMPANY for any reason shall not be sold or transferred to any third party without THE COMPANY's prior written authorization, and unless and until all labels, tags, packaging and markings making use of the Special Features or otherwise identifying the Merchandise to THE COMPANY have been removed. Vendor shall defend, indemnify and hold THE COMPANY and its officers and shareholders, agents and employees, harmless from and against all costs, expenses, liabilities and losses reasonably incurred (including reasonable attorneys' fees and associated legal costs) arising out of any claim of any violation of personal or property rights based on, or in connection with, the actual sale, offer to sell, use or

importation of any material, Merchandise, or any other thing used, created, supplied, manufactured, or obtained by Vendor in connection with Vendor's performance under this Agreement

24. **Advertisement:** The parties hereto agree that if Vendor has represented that it will publicly advertise the Merchandise in accordance with a proposed schedule and thereafter Vendor shall, without the prior written approval of THE COMPANY, fail to advertise Merchandise in accordance with such schedule, THE COMPANY may return such Merchandise to Vendor and may charge the Vendor with the cost of transportation, shipping, unpacking, examining, repacking, reshipping and other like expenses. Any claims for failure to advertise the Merchandise in accordance with such schedule made by THE COMPANY shall be charged back to Vendor and the amount thereof deducted from payments to be made to Vendor or, alternatively, to be promptly refunded to THE COMPANY. ANY ADVERTISING THAT WILL USE ANY PROPRIETARY RIGHTS OF THE COMPANY IS SUBJECT TO PRIOR WRITTEN APPROVAL OF THE COMPANY, AS FURTHER DESCRIBED IN THE THE COMPANY VENDOR STANDARDS MANUAL.

25. **Indemnification:** Vendor shall indemnify, defend and hold THE COMPANY harmless from and against any and all alleged, actual or threatened liability, claim, loss or damage arising in any way whatsoever out of or in connection with the sale, advertising, possession, handling, use, importation, manufacture, display, misuse, resale, labeling or return of the Merchandise ordered (and if the Merchandise shall include the sales of services, the provision of such services). Vendor shall defend every suit that may be brought against THE COMPANY by reason of any of the foregoing, whether meritorious or not, and shall pay all expenses and fees of counsel which shall be incurred in connection with such defense, together with all costs, damages and any other sums recoverable in every such suit or settlement thereof. If Vendor fails to take timely action to defend such a suit, THE COMPANY may defend such suit at Vendor's expense. THE COMPANY, in addition to any other rights, may forthwith cancel any unshipped portion of the Order and return prior deliveries to Vendor for payment or credit. With respect to any claims falling within the scope of the foregoing indemnifications, Vendor agrees to keep THE COMPANY fully advised with respect to such claims and the progress of any suits. Additionally, THE COMPANY shall have the right to participate, at Vendor's expense, in any suit instituted against it, and to designate attorneys to defend it. Any designated attorneys shall be independent of attorneys chosen by Vendor relating to such claim or any related claim. Vendor is not to settle, compromise or otherwise enter into any agreement regarding the disposition of any claim against THE COMPANY without the written consent and approval of THE COMPANY.

26. **Confidentiality:** "Confidential Information" means nonpublic information that THE COMPANY designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential by Vendor. Confidential Information includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased THE COMPANY products, the marketing or promotion or any THE COMPANY product, THE COMPANY's business policies or practices, and information received from others that THE COMPANY is obligated to treat as confidential. Confidential Information shall not include any information, however designated, that i) is or subsequently becomes publicly available without Vendor's breach of any obligation owed to THE COMPANY; (ii) became known to Vendor prior to THE COMPANY's disclosure of such information to Vendor pursuant to the terms of this Agreement; (iii) became known to Vendor from a source other than THE COMPANY other than by the breach of an obligation of confidentiality owed to THE COMPANY; or (iv) is independently developed by Vendor. Vendor shall refrain from disclosing any Confidential Information to third parties. Vendor shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information or any other breach of this Agreement by Vendor and its employees and consultants, and will cooperate with THE COMPANY

in every reasonable way to help THE COMPANY regain possession of the Confidential Information and prevent its further unauthorized use or disclosure. Vendor shall, at THE COMPANY's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to Vendor as Confidential Information, or at THE COMPANY's option, certify destruction of same. Vendor acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that THE COMPANY shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable as may be deemed proper by a court of competent jurisdiction.

**27. Liability Insurance:** Vendor shall purchase and maintain, at its sole cost and expense, Comprehensive General Liability insurance including Products Liability coverage with limits of not less than \$1,000,000 Combined Single Limit each occurrence Bodily Injury and Property Damage, General Aggregate \$2,000,000 per year. Such insurance shall be carried by an insurer with a BEST rating of A VII or better. Coverage shall include Broad Form Property Damage, Contractual Liability including Defense Costs, Cross Liability exclusion deleted, Personal/Advertising liability and shall provide Waivers of Subrogation. Vendor agrees to continuously maintain such insurance for the period during which any party may, as a matter of law, be entitled to assert a claim against any Indemnified Party. To the extent Vendor shall be providing delivery or other services to THE COMPANY, Vendor shall provide evidence of automobile coverage as well as Worker's Compensation and Employer's Liability evidencing the coverage to applicable statutory limits and Employer's Liability to limits of \$1,000,000. The insurance company issuing such policy shall bear endorsements to the effect that THE COMPANY shall be notified not less than thirty (30) days in advance of modification or cancellation thereof (except that such notice shall be 10 days in advance for nonpayment of premium) by certified mail to THE COMPANY Attention: THE COMPANY Logistics/Vendor Relations. The policy shall also bear endorsements naming THE COMPANY and Party City as additional insureds under the Broad Form Vendors Endorsement. A renewal certificate evidencing the insurance coverage required pursuant to this Agreement shall be provided to THE COMPANY at least thirty (30) days prior to the expiration of the policy. **Vendor shall furnish to THE COMPANY a certificate of insurance evidencing such insurance within thirty (30) days following commencement of this Agreement.** Vendor specifically agrees that the indemnities referenced in this Agreement are not limited to the insurance coverage set forth in this paragraph. Vendor/and/or Vendor's representatives', insurers' or agents' failure to comply with the insurance of this Agreement shall be considered a breach of this Agreement.

**29. Additional Work Performed:** All work performed by Vendor and all materials used in connection with any Order shall be at the risk and expense of Vendor until delivered and accepted by THE COMPANY. If any Order calls for work to be performed by Vendor upon any premises owned or controlled by THE COMPANY, Vendor shall keep such premises and work free and clear of all liens and shall furnish THE COMPANY with any certificate, affidavit or waiver as provided by law. Whenever Vendor has in its possession any of THE COMPANY's property, Vendor shall be deemed an insurer thereof and shall be responsible for its safe return to THE COMPANY.

**30. Jurisdiction and Venue:** Vendor consents to the jurisdiction of, and agrees that any suit, action or proceeding arising out of or in any way related to the Merchandise shall be brought in the courts of the State of New Jersey or the United States District Courts for the District of New Jersey. Vendor waives any objection it may have to the venue or forum of any such controversy that is brought in the aforementioned courts and waives any claim that any such controversy has been brought in an inconvenient forum and consents to the jurisdiction of the aforesaid New Jersey Courts.





31. **Taxes:** Except as otherwise provided herein, and unless prohibited by statute, Vendor shall pay any federal, state or local use tax, transportation excise tax, or other tax which may be imposed in connection with the performance of the Order.

32. **Waiver:** THE COMPANY's failure to insist on strict performance of any term or terms hereunder shall not constitute a waiver of any term or default by Vendor. Any waiver of any breach or default hereof shall not constitute a waiver by THE COMPANY of any other or subsequent breach or default of Vendor.

33. **Resale:**

- (a) THE COMPANY acknowledges that it holds valid resale numbers in all states where THE COMPANY is licensed to do business (excluding states not recognizing sales for resale as sales tax exempt).
- (b) Vendor shall furnish THE COMPANY, when required by law, attention THE COMPANY's Tax Department, the appropriate exemption certificate which shall be completed by THE COMPANY and returned to Vendor. THE COMPANY's "Blanket Resale Certificate" may be substituted by THE COMPANY, if permitted by law.

34. **Miscellaneous:**

Vendor agrees that it will not offer employment to, employ, hire or otherwise engage the services of any person who is or has been within the preceding 180 days an employee of THE COMPANY.

Vendors must limit communication to stores to store specific/franchisee specific issues only. All general communication must be made through the THE COMPANY Corporate office.

Vendor shall not offer or provide to any THE COMPANY Associate any gifts, gift certificates, discounts, gratuities, services or any other item of value. Any deviation from this policy could result in the termination of Vendor's relationship with THE COMPANY. All exceptions must receive prior written approval by THE COMPANY's CEO or CFO.

To report issues regarding accounting, internal accounting controls or other business conduct matters, including any inappropriate associate comments, please call the Vice President of Inventory Management at 973-453-8600 or the Vice President and General Counsel and Secretary at 973-453-8600. Any calls or comments will be handled in a confidential manner.