

TERMS AND CONDITIONS OF PURCHASE ORDERS

1. **OFFER AND ACCEPTANCE.** These 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") with respect to the business organization identified as the "Purchaser" on the order form attached to these Terms and Conditions. Such order form and these Terms and Conditions, collectively, constitute, the "Purchase Order." The "Vendor" is the supplier of the "Goods," each as also described in the attached order form. This Purchase Order is only an offer that is conditioned upon Vendor's acceptance in accordance with its terms, only as presented and this offer is deemed accepted as presented upon Vendor's acceptance. Accordingly, each and every Vendor has agreed or is deemed to agree to these Terms and Conditions. Purchaser does not consent to, or accept and hereby expressly objects to any Vendor attempt to change, reject or supplement to any Purchase Order or any effort to condition its acceptance upon any such change, rejection or supplement to any Purchase Order and Purchaser's objection to such effort shall not be waived by acceptance of any Goods. Vendor's acceptance may be effected only by (i) written confirmation, (ii) shipment of conforming Goods in accordance with this Purchase Order, (iii) participation in an agreed upon inventory replenishment program and/or (iv) other Vendor performance in accordance herewith; *provided that*, if Vendor does not ship all Goods ordered hereunder on or before the "Cancellation Date" specified, then, in addition to any other Purchaser right under Applicable Law, as defined in Section 9, Purchaser reserves the right to declare that this Purchase Order has lapsed without Vendor acceptance with respect to Goods that were not shipped on or before the Cancellation Date and, therefore, is null and void as to those Goods.

2. **EDI TRANSACTIONS.** Transactions under Purchase Orders are effected by electronic data interchange ("EDI") and comply with the Macy's Vendor Standards as posted on macysnet.com, including the requirements of the Macy's Transportation Office. Vendor shall ensure that its EDI processing system is capable of sending and receiving EDI data in conformance with the version of VICS system then utilized by Purchaser, all as specified in the Macy's Vendor Standards, which Vendor hereby acknowledges have been provided as posted on www.macysnet.com. Vendor shall bear its own EDI-related costs, including costs for any equipment, software and services required for effective and reliable EDI transactions, including maintenance of security procedures sufficient to ensure that EDI transmissions are authorized and protected from improper access, which includes protection of its electronic signature. Such electronic signature must accompany all of Vendor's transmissions to authenticate such communications and which shall be used consistently, together with appropriate security procedures that are reasonably sufficient to ensure that Vendor's EDI transmissions are protected from improper access, to protect the integrity and confidentiality of Purchaser's systems. Each party agrees that it shall not disclose to any unauthorized person the other party's electronic signature. Vendor acknowledges that it has been advised that its use of paper documentation rather than EDI may subject Vendor to costs and administrative charges.

3. **MACY'S VENDOR STANDARDS GENERALLY.** Macy's Vendor Standards set forth Purchaser's specifications and requirements for Vendor's performance under every Purchase Order and, as then posted on macysnet.com, are incorporated by this reference as though stated in full in each Purchase Order. Vendor agrees that this notice of and reference to said Macy's Vendor Standards constitutes actual and reasonable notice thereof and that Vendor is subject to the Macy's Vendor Standards in their entirety. Vendor agrees to not deviate from the Macy's Vendor Standards applicable to its Goods unless pursuant to Purchaser's written instructions and acknowledges that it shall be liable for its failure to comply strictly with said

Macy's Vendor Standards. Vendor further agrees that any unauthorized deviation from the Vendor Standards shall obligate Vendor to pay and shall entitle Purchaser to recover costs, administrative charges and/or liquidated amounts from Vendor, as specified in the Macy's Vendor Standards for such non-compliance and that, because Purchaser and/or "Purchaser's Affiliates," as defined in Section 8, shall suffer harm as a result of such non-compliance, Purchaser may impose and recover such costs, administrative charges and/or liquidated amounts from Vendor administrative charges with respect to any such unauthorized non-compliance, which may be charged back to or offset from any amount otherwise owed 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 in the Purchase Order. Non-conforming tenders include untimely deliveries, as to which Purchaser may apply the provisions of Sections 1 and 5. In addition, Purchaser reserves the right to impose a reasonable charge for storage and/or additional handling due to untimely delivery. Further, Vendor's failure to follow delivery instructions as set forth in a Purchase Order, including the Macy's Transportation Office requirements 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 such expenses in such event, together with any other amounts, costs and/or administrative charges as may be incurred by Purchaser or applicable to such failure. In any event, upon Purchaser's request, Vendor shall furnish Purchaser written proof of a delivery without charge. In addition, to the extent required by Purchaser, Vendor shall prepare and provide to Purchaser such periodic reports, tracking purchases made by Purchaser and, if directed Purchaser Affiliates, by item or as otherwise directed by Purchaser.

5. **NONCONFORMING TENDERS.** 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 are otherwise defective; (iv) delivered in the quantity ordered; (v) in accordance with the applicable specifications upon which the 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 nonconforming tender. Further, if Vendor does not ship Goods in accordance with Purchaser's requirements and as set forth in the applicable Purchase Order, then such failure also shall constitute a nonconforming , which Goods shall meet all applicable specifications, including any contained in descriptions, samples, catalogs, promotional material or other statements delivered or made to Purchaser. In the event of a non-conforming tender, Purchaser may elect, as to any or all of the Goods in question and without any further authorization from Vendor to (i) accept the Goods, (ii) cancel the 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 these options Purchaser elects, Vendor shall pay Purchaser such liquidated amounts, related costs and/or administrative charges as are set forth in the Purchase Order and/or Macy's Vendor Standards. Vendor acknowledges and agrees that Purchaser either (a) posting such amounts against Vendor's trial balance on macysnet.com within four (4) weeks of the *later* of its receipt of the non-conforming tender or discovery that the Goods were nonconforming, or (b) 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 action. Where the non-conforming tender involves a latent condition, notice to the Vendor within four (4) weeks of Purchaser gaining actual knowledge of the condition and, accordingly, of the non-conforming tender, also shall 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. Purchaser's receipt and/or acceptance of a non-conforming tender shall not waive any Purchaser claim or right in respect of such tender, whether provided under this document, by law or under equity and Purchaser hereby conditions any future acceptance of Goods constituting or included in a non-conforming tender on Purchaser's rights as set forth in this Section 5, including the right to later reject or otherwise direct the disposition of such Goods. Purchaser, notwithstanding any other provision hereof, shall only be obligated to make payment for Goods that it elects to retain and, as to such retained Goods, the price payable shall be as specified in the Purchase Order, subject to applicable offsets, including offsets for amounts attributable to the non-conforming tender. Vendor agrees and acknowledges that timeliness is of the essence of every Purchase Order and that its compliance with the requirements of this Purchase Order and the Macy's Vendor Standards, including the requirements of the Macy's Transportation Office, likewise are of critical importance and that if vendor fails to comply therewith, it shall, in addition to having made a non-conforming tender, have materially breached this Purchase Order and that nothing contained in this Section 5 or elsewhere in this Purchase Order confers upon Vendor a right to cure without Purchaser's written consent.

6. **TERMINATION BY PURCHASER.** Purchaser has the absolute right to cancel a Purchase Order for any reason with respect to Goods that have not yet 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 shall, at its option, either (i) purchase such Goods that Vendor especially manufactured for Purchaser prior to Purchaser's cancellation 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 but only to the extent that such costs were actually incurred by Vendor in connection with such Goods prior to Purchaser's cancellation, but only up to a maximum of up to fifty percent (50%) of Purchaser's purchase price for such Goods.

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 the date that (i) the Goods are delivered and (ii) Purchaser receives Vendor's invoice with respect to such Goods, except, as to Goods received prior to their 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 against any amount otherwise due Vendor, all amounts claimed by Purchaser. 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 each such Purchaser Affiliate shall have the right to transmit payment to Vendor for itself and on behalf of any one or more 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 Goods ordered by Purchaser and/or Purchaser Affiliates.
- G. Purchaser hereby provides notice and Vendor accepts notice and agrees that non-conforming tenders may result in payment delays, any and all non-merchandise charges must be separately invoiced and under no circumstances shall Purchaser be liable for any interest charges or late payment fees.
- 8. **PRICE REVISIONS.** Pricing for Goods shipped under this Purchase Order shall be as specified, except as otherwise agreed by Purchaser in writing; provided that: (a) Vendor shall meet the lower prices of legitimate competition or accept cancellation of this Purchase Order with respect to the Goods ordered hereunder; (b) either party may seek an adjustment in the pricing for ordered Goods, with notice given at least sixty (60) days' 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 but a party seeking such an adjustment shall submit documentation evidencing the justification for such request that is reasonably sufficient to the other party and both parties shall reasonably cooperate to determine whether the price change request is justified by then existing circumstances with any such adjustment to be effected only by a mutual, written confirmation; and (c) Purchaser may offset amounts as provided for in the Macy's Vendor Standards, including these Standard Terms and Conditions. No price increase is effective unless approved in writing by an authorized Purchaser representative.
- 9. **COMPLIANCE WITH LAWS; VENDOR COVENANTS.** With the acceptance of each Purchase Order, 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 or requirements therein as may be relevant to Vendor's performance hereunder, as may be in effect in all jurisdictions in which Goods are sourced, transported or offered for sale or which are otherwise relevant to Vendor and/or Purchaser operations (*collectively*, "Applicable Law"). For purposes of illustration only, 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, the Federal Trade Commission Act, the Occupational Health and Safety Act, California Proposition 65, the Tariff Act of 1930, the Lacey Act and all like laws, together with all of the rules, regulations and guides promulgated together or with respect thereto.
 - B. It is solely Vendor's obligation to identify and comply with all Applicable Law as may be relevant to its operations and/or the Goods and Vendor further acknowledges that Purchaser is expressly relying on Vendor's compliance with all such Applicable Law and this Purchase Order.
 - C. 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 in that the 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, (ii) 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 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 with the regulations and orders of the U.S. Department of Labor (including as have been or may be 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. Vendor 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. Vendor 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 Guaranty of Compliance" as applicable to those goods sold by Vendor is provided to Purchaser pursuant to Section 9A of these Purchase Order Terms and Conditions is confirmed. Confirmation of such Continuing Guaranty of Compliance is deemed to be made by Vendor's electronic acceptance of the Purchase Order Terms and Conditions and acceptance of each Purchase Order. The Continuing Guaranty of Compliance affirms that all Goods sold by Vendor or which may thereafter be sold by Vendor to Purchaser shall be in compliance with all Applicable Laws, including that all such Goods are not misbranded nor falsely nor deceptively advertised or invoiced. The Continuing Guaranty of Compliance shall remain effective until explicitly revoked. No invoice pertaining to the Goods shall become due or payable until any request by Purchaser in respect of such confirmation is satisfied and is received by Purchaser. The foregoing includes that Vendor hereby further covenants, represents, warrants and guarantees that the Goods sold pursuant to this Purchase Order: are not misbranded nor falsely nor deceptively advertised or invoiced under Applicable Law and are in all respects in compliance with Purchaser's Purchase Order Terms and Conditions, which include all of the laws and regulations enumerated herein, as well as all like laws, together with all of the rules, regulations and guides promulgated together or with respect thereto; and all other activities contemplated by this Purchase Order, including the manufacture, transportation and/or delivery of the Goods and/or Purchaser's acquisition and/or sale of such Goods shall likewise comply with all Applicable Law as herein so enumerated, including as may in any manner whatsoever concern contents, production, warehousing, standards, weights, measures, sizes, legends, label, descriptions and/or any other particulars appearing on the Goods and/or any packaging, containers or labels associated with the Goods
- F. 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 comply with all Applicable Law 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 hereby certified 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 further confirmation of such filings have been made or deemed to have been 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 document required by any Applicable Law) is not on file with the appropriate governmental authority, Vendor shall provide such continuing guarantee or other document as may be requested by Purchaser to be delivered to the attention of: Vendor Services, Macy's Corporate Services, 2101 East Kemper Road, Cincinnati, OH 45241, which shall clearly identify Vendor, provide its duns number and its contact information. Whether provided to a governmental authority or to Purchaser, each such continuing guarantee shall specify the Goods covered and be in compliance with all Applicable Law, including that it be current and be in proper form and contain all required language. Such certifications shall also assure that all such Goods are not misbranded, falsely or deceptively labeled, improperly advertised or invoiced and that the Goods comply with the terms and requirements of all Applicable Law governing their safety, labeling, advertising and/or invoicing.

- G. The Goods shall be free from defects in material and workmanship and shall be fit and safe for each of the uses for which normally and reasonably produced.
- H. In the event the Goods or any component thereof, including packaging, is manufactured or acquired from a third party, Vendor shall first have secured Purchaser's consent and shall have included in its contract with such third party that it shall comply with the policies included in the Macy's Vendor Standards and that any and all warranties, representations, guarantees and indemnifications given by such manufacturer shall flow to and benefit Purchaser, being enforceable by Purchaser as well as Vendor and Vendor shall not agree to any amendment to or modification of any such contract that would diminish or impair any right of Purchaser as to such third party manufacturer without Purchaser's prior written consent
- I. If 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 such order and if Purchaser, after receipt of Vendor's written information concerning the applicability of Proposition 65, confirms to Vendor that it wishes to proceed with such order, then Vendor shall place warnings that comply with Proposition 65 and any and all other Applicable Law directly on such Goods as may be offered for sale in California, regardless of whether to be offered in retail outlets, by mail or by electronic media.
- J. Neither the Goods nor any conduct of Vendor (or its agent) infringes on any right or interest of any third party, including any existing or alleged design, design patent, patent, trademark, trade name, copyright, trade dress, right of privacy or similar right or interest.
- K. The Goods are not made, in whole or in any part, with any domestic dog or cat fur or any other element derived from any such animal.
- L. Vendor's conduct as to the Goods, including their acquisition, manufacture, production and/or sale to Purchaser shall comply with the Macy's Vendor Standards, including each and every corporate policy included therein or otherwise provided to Vendor, which include Macy's Vendor/Supplier Code of Conduct and/or Statement of Corporate Policy concerning the use of child or forced labor and unsafe working conditions.

- M. Vendors shall cause all of their employees, agents, contractors (including freelancers), and representatives (collectively, "Vendor Representatives") to comply with all Applicable Law and all Purchaser policies and procedures at all times when interacting with Purchaser, Purchaser Affiliates and/or their respective employees, customers and invitees, whether or not then on the premises of Purchaser or any Purchaser Affiliate. To the extent that any Vendor provides Vendor Representatives, equipment and/or fixtures to Purchaser or any Purchaser Affiliate, 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.
- N. Vendors shall comply with any request by Purchaser (or a Purchaser Affiliate) to reassign any one or more Vendor Representatives so that such individual is no longer working with Purchaser or a Purchaser Affiliate and is not thereafter assigned to any of their respective premises.
- O. Vendor shall comply with Purchaser's policy as to communications with and/or gifts to employees of Purchaser and/or Purchaser Affiliates and to the extent that Vendor desires to communicate with or provide any benefit, compensation or award of any kind to any employee of Purchaser or Purchaser Affiliate, it must first secure the consent of Purchaser or the Purchaser Affiliate, as applicable and Vendor must comply with all Applicable Laws, including in respect of reporting any such benefit, compensation or award to all required governmental entities, whether for tax purposes or otherwise, which shall include issuance of any forms or reports, as well as notice to Purchaser and/or the relevant Purchaser Affiliate. Upon Purchaser's request, Vendor shall provide a certification, confirming its compliance herewith executed by a principal officer.
10. **EFFECT OF VENDOR COVENANTS.** By accepting this Purchase Order, Vendor acknowledges and agrees that all of its representations, warranties and guarantees made herein have the same force and effect as though provided in a separate written agreement executed on behalf of Vendor by an authorized signatory and delivered to Purchaser and that all such representations, covenants and warranties, express or implied, shall survive inspections, acceptance and payment by Purchaser, a Purchaser Affiliate or customer.
11. **RESERVATION OF PURCHASER RIGHTS.** Purchaser reserves the right to advertise, offer the Goods for sale, and sell such Goods at any retail facility and/or by any medium, including electronic or other non-traditional means and such reservation is an essential term of all Purchaser transactions effected under or pursuant to this Purchase Order.
12. **INDEPENDENT CONTRACTORS.** Vendor is an independent contractor. No provision of this Purchase Order shall or shall be deemed to create any other relationship between the parties such as employer/employee, principal/agent, partners, joint-venturers, or any association other than independent contractors. Accordingly, Vendor 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 and Vendor shall have exclusive control and discretion over the manner, means, details and methods by which it performs its obligations hereunder, being solely responsible for the provision of all tools, equipment, and facilities necessary for its performance and the payment of all costs incurred in the course of such performance.
13. **INDEMNIFICATION.** In consideration of Purchaser's agreement to purchase the Goods, Vendor, to the fullest extent permitted by law, shall defend, indemnify and hold harmless Purchaser (which term "Purchaser" shall, for purposes of this Section 13, include all Purchaser Affiliates) 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 act or omission of Vendor, including any actual or alleged violation or breach of any of its warranties, representations, covenants or other obligations as 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 as to any purchase, possession, sale or resale, use or condition possession or resale of any and/or all Goods covered by this Purchase Order, from any patent or latent defects therein or the dangerous condition thereof, or by virtue of any misrepresentation or breach of warranty (express or implied) as to such Goods or otherwise relating to any transaction contemplated hereby, including as may relate to a subsequent sale of any Goods and the parties' ongoing relationship without regard to any allegation as any negligent act or omission by any party or other person, 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. Vendor further agrees that the foregoing shall apply to any Claim related to the conduct of any Vendor Representatives, including Claims by or on behalf of any 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 herein shall apply with equal force and effect to Vendor's responsibility in respect of any recall of Goods, whether voluntary or involuntary, including as requested or required by any governmental agency, including reimbursement of all costs and expenses as may be required of Purchaser to assure compliance with all Applicable Law, including as to Vendor Representatives, fixtures and equipment and/or recalls relating to Goods. Furthermore, Vendor may not settle any such Claim without Purchaser's consent and Purchaser may, at its sole option, require its own defense of any Claim, with Vendor to pay any and all of costs and/or expenses (including reasonable counsel fees and expenses) incurred by Purchaser in the protection of its interests.

14. **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 shall provide coverage on a primary basis and not be contributory with or excess over any other insurance available to Purchaser and provide cross-liability coverage as provided under standard ISO forms' separation of insureds clause, 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 under this Purchase Order, including in respect of Products/Completed Operations coverage and indemnification. Such Vendor insurance shall name Purchaser and Macy's, Inc. as additional insureds and 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. Upon Purchaser's request, Vendor shall furnish Purchaser with certificates evidencing such insurance coverage or the actual endorsements and/or policies, as requested by Purchaser. Vendor shall bear its own insurance and insurance-related expenses and its liability shall not be limited to its insurance coverage.

15. **CHANGE IN SPECIFICATIONS.** Purchaser may change, add to, delete from or otherwise revise its specifications for Goods by notice to Vendor and 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.
16. **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 staff as necessary to ensure that Vendor's obligations are performed in accordance with this Purchase Order, including all Purchaser specifications. Such ancillary Vendor services shall include support provided to Purchaser and/or Purchaser Affiliates to enhance sales of the Goods, including by providing Vendor Representatives, equipment and/or fixtures, with all such obligations to be performed in a first-class and professional manner that complies with Applicable Law, for which Vendor shall be solely responsible
17. **CONFIDENTIALITY.** All non-public information concerning Purchaser and/or a Purchaser Affiliate (for purposes of this Section 17, references to "Purchaser" include all Purchaser Affiliates), as may be 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 and include 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, together with any other non-public material that Vendor becomes privy to during the course of its performance. Vendor agrees that all of the foregoing information, together with all other information that relates to the Goods or their design provided by or for Purchaser, 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. 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 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 such information and all material that contains any version thereof. 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, to benefit Purchaser, and not for any other purpose such as, for example, Vendor's marketing efforts. Vendor shall not, in any event, collect any customer information ("PII") except with Purchaser's prior written approval and then may neither otherwise use nor disclose any such PII to any person or entity other than Purchaser unless pursuant to a separate written agreement executed by Purchaser's authorized signatory. In respect of all confidential information, specifically including all PII, 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 notifications with respect thereto, at Vendor's expense.
18. **DISPUTES AND REMEDIES.** In the event of a dispute under this Purchase Order, the parties shall endeavor to reach an amicable resolution but 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 provided for herein or otherwise available to it, including judicial resolution in accordance with Section 21. 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. Vendor acknowledges that Purchaser may dispute any invoice, in whole or in part and may withhold the disputed amount. Purchaser's failure to pay such disputed amount shall not be 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 offset any amount owing to it (or to any Purchaser Affiliate) from Vendor (or any Vendor affiliate) against any amount otherwise payable to Vendor by Purchaser (or any Purchaser Affiliate). The provisions of this Section 18 do not limit Purchaser's ability to cure any non-conformity or charge Vendor for related liquidated amounts, costs and/or administrative expenses otherwise provided for, including as set forth in Section 5. In addition to any other right or remedy available hereunder, by law or in equity, Purchaser reserves the right to cancel this Purchase Order, in whole or in part, and return to Vendor, at Vendor's expense, any Goods not in compliance herewith, including any that are the subject of 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 and Vendor agrees to reimburse Purchaser fully for 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 13, which shall be subject to the limitations period applicable thereto under New York law.

19. **DEFAULT.** Vendor's failure to comply with any term, covenant or obligation 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 part. Further, any of the following likewise shall constitute a Vendor default: (i) making a general assignment to benefit its creditors, (ii) commencement, by or against Vendor of any proceeding seeking to adjudicate it a bankrupt or insolvent unless such proceeding has 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 Vendor's performance of its obligations, Purchaser may demand, in its sole discretion, from Vendor such assurances as Purchaser deems adequate as to Vendor's future performance 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 own performance or terminate this Purchase Order, in whole or in part, based on a deemed anticipatory breach by Vendor.
20. **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 hereunder, including by reason of any delay, omission or error in the electronic

transmission or receipt of any document, even if such party has been advised of a possibility of such damages, except only pursuant to an obligation to indemnify.

21. **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 doctrines regarding conflicts of law. 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 and within the County of New York to be resolved individually, without resort to any form of class action. Both parties consent to such jurisdiction, waive trial by jury in any such action and/or any complaint as to the convenience of such forum.
22. **AUDIT.** Purchaser shall have the right to inspect and audit, during normal business hours, Vendor's records and documents as to Vendor's sales to Purchaser and/or any Purchaser Affiliate, to ensure that Vendor compliance with the provisions of this Purchase Order, including to ensure that Vendor is complying product specifications and making all payments required to be made by Vendor hereunder in respect of advertising, staffing support or otherwise.
23. **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 any unfilled portion of this Purchase Order, in whole or part, without any liability to Vendor.
24. **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 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 posted on macysnet.com, incorporated by this reference, without regard to how communicated to Vendor; (iv) references to days or months are intended and are to be construed as referring to calendar days and months; and (v) no provision of this Purchase Order shall be construed against a party by virtue of the fact that such party drafted or dictated such provision or the Purchase Order as a whole.
25. **NOTICES; PURCHASER RESPONSES.** All notices given, whether or not required hereunder, shall be in writing and shall be delivered by hand or sent by receipted courier or US mail (registered or certified with return receipt requested if addressed to Purchaser), or electronically unless otherwise required by Purchaser in its written instructions. It is agreed by 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.
26. **EFFECTIVENESS; AUTHORITY.** 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; provided that, this Purchase Order shall be binding and effective only after it is executed and communicated by Purchaser's authorized signatory.
27. **AMENDMENTS AND WAIVERS.** This Purchase Order may not be amended or modified in any respect except in a writing signed by the parties and no term hereof may be

supplemented, amended, waived or otherwise affected by any inconsistent Vendor act or by any additional language in any Vendor's documentation. In order to be effective, execution on behalf of Purchaser of any writing must be by its authorized signatory. Purchaser's failure to enforce any provision of this Purchase Order or exercise any right or remedy resulting from Vendor's breach shall not be construed as a waiver by Purchaser of any Vendor breach or consent to any further or other deviation from the terms of this Purchase Order. Further, neither Purchaser's acceptance of any Vendor performance nor Purchaser's past custom or practice shall be or be construed as a waiver of any Vendor breach or Purchaser's consent thereto.

28. **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; provided that, notwithstanding the foregoing or 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 guarantee or impair any Purchaser right with respect thereto, including as to any subsequent support for sale of Goods by Purchaser or any Purchaser Affiliate., whether by providing Vendor Representatives, equipment or fixtures.
29. **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 interest nor delegate any obligation hereunder without Purchaser's consent and Purchaser shall not be obligated 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 or other circumstances then prevailing. In no event may Purchaser be bound to any obligation except by a written agreement executed on behalf of Purchaser by its authorized signatory. 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 (including a factor or other person or entity that, by payment of money or otherwise, acquires an interest in Vendor's business or receivables), 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, and that under no circumstances whatsoever shall any person or entity claiming any such 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 have been entitled hereunder.
30. **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 third party beneficiaries of any Vendor's agreement with any third party regarding the production or distribution of the Goods or any component thereof. No person or entity other than a Purchaser Affiliate shall be or 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 a factor in respect of Vendor) to enforce any right or claim hereunder, may not assert such right or claim except to the extent that such right or claim could have been asserted by the party from whom such right or claim was derived 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.
31. **SEVERABILITY.** The unenforceability or illegality of any provision of this Purchase Order shall not render any other provision unenforceable, null or void so long as the provisions

remaining enforceable are sufficient to constitute a legally binding agreement, which shall be enforced in accordance with the parties' intentions.

32. **ENTIRE AGREEMENT.** This Purchase Order, including the Macy's Vendor Standards and any material incorporated herein by reference, 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 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.