

ACE HARDWARE CORPORATION
PURCHASE ORDER TERMS AND CONDITIONS

1. **Acceptance.** This Order shall be deemed accepted by Seller unless Seller rejects such order by a writing within five (5) business days after receipt thereof.

2. **Modification.** These Terms and Conditions may be modified only by a writing signed by a duly authorized representative of Buyer, and may not be modified or supplemented by course of dealing or course of performance between the parties or by usage of trade.

3. **Termination.** Notwithstanding any other provision contained herein, Buyer specifically reserves the right to revoke this Order at any time prior to acceptance.

Time is of the essence with respect to this Order. If delivery of goods is not completed by the time designated or promised, Buyer may terminate, cancel or postpone this Order as to the goods not yet received and/or services not yet rendered by written or telegraphic notice or verbal notice confirmed in writing. Buyer may also terminate, cancel or postpone this Order as to undelivered shipments or unperformed services by written or telegraphic notice to the Seller in the event of fire, flood, tempest, explosion, other catastrophe, war, riot, strike, lockout or refusal of employees to work, or in the event that any legislative, executive or judicial act of the federal or state government, or any political subdivision or municipality thereof substantially affects Buyer's operations, or substantially impairs Buyer's use of the goods or services ordered hereunder, or in the event that Buyer suspends or discontinues business for any reason.

4. **Inspection.** Goods purchased hereunder are subject to Buyer's inspection and approval within a reasonable time after delivery. Buyer reserves the right to refuse any items shipped contrary to instructions, specifications or descriptions furnished by Buyer or in other than recognized standard containers or which shall fail to conform with any other provisions hereof or any requirements provided by law. Buyer may hold any rejected goods at Seller's risk and expense and may charge Seller with costs of transportation, shipping, unpacking, examining, repacking, reshipping or other like expenses. Payment shall not constitute an acceptance of any items ordered hereunder or impair Buyer's right to inspect or any of its remedies.

5. **Price Warranty.** Seller warrants that the prices for the goods are equal to the most favorable prices currently extended to any other customer for the same goods in similar quantities. In the event of any price reduction during the term of this Order, Seller agrees to reduce the prices hereof correspondingly. Seller warrants that the prices shown on this Order shall be complete, and that no additional charges of any kind shall be added without Buyer's express written consent.

6. **Payment.** The time for payment by Buyer for the goods shall be computed from the latest of (a) Seller's invoice date; (b) actual shipment date; or (c) shipment date specified in this Order. No shipping or packaging charges shall be imposed upon Buyer unless specified. If any such charges are specified as being Buyer's obligation, Seller shall pack, mark and describe the items ordered hereunder so as to obtain the lowest freight rate possible without jeopardizing the safe shipment of said items and without causing a violation of any applicable law or regulation, unless other instructions have been given by Buyer, and any penalties or increased charges resulting from failure to comply with this provision will be charged to Seller.

7. **Taxes.** The price includes all applicable federal taxes in effect on both the date of this Order and the date of delivery of the goods. Sales, use, gross receipts or similar direct taxes imposed by any tax authority on

goods purchased for resale shall not be added to the sales price. Sales, use, gross receipts or similar direct taxes imposed by any tax authority on goods purchased for consumption shall be added to the sales price and shown separately on Seller's invoice. Seller shall duly remit all such taxes, which it is required to collect, to the proper governmental authorities when due. If Seller fails to remit such taxes and Buyer is required to do so, Seller will indemnify Buyer for the amount required to be paid by Buyer, including lawful penalties assessed in connection therewith.

8. **Assignment.** No rights or duties arising out of this Order shall be assigned or delegated without Buyer's prior written consent; provided, however, that Seller may upon reasonable advance notice to Buyer assign receivables arising out of this Order subject to all discounts, set-offs, credits for return on non-conforming goods and all other rights and remedies which Buyer may have against Seller arising out of this Order or any other transaction between the parties hereto.

9. **Warranties.** Seller warrants to Buyer, its successors, assigns and customers that:

(a) **General.** The goods will pass without objection in the trade under the contract description; will be fit for the ordinary purposes for which such goods are used; and will be free of defects in workmanship and material.

(b) **Title.** The title conveyed to Buyer with respect to the goods shall be good and merchantable and its transfer rightful; and that the goods will be delivered free of any security interest, lien, encumbrance, or charge.

(c) **Infringement.** The goods will be free of the claim of any person for infringement or misappropriation of any patent, copyright, trademark, trade secret, license or the like and Seller agrees to assume the defense of any such claim and to indemnify Buyer, its successors, assigns, and customers against any loss, damage, cost and expense (including attorney's fees), arising, directly or indirectly from such claim.

(d) **Compliance.** The goods will be furnished in compliance with all federal, state and local laws, rules and regulations, as amended, including but not limited to, the Robinson Patman Act of 1914; the Fair Labor Standards Act of 1938; the Occupational Safety and Health Act of 1970; the Consumer Product Safety Act of 1972; and the California Safe Drinking Water and Toxic Enforcement Act of 1986 known as Proposition 65, applicable to the manufacture, shipment, sale, use, performance, safety, branding, packaging, marking and labeling of the goods.

10. **Waiver.** No claim or right of Seller or Buyer that arises out of a breach of this Order can be discharged in whole or in part by a waiver or renunciation of the claim or right, unless the waiver or renunciation is supported by consideration and is in a writing and signed by Seller or Buyer.

11. **Remedies.** Buyer shall have all rights and remedies specified in this agreement in addition to those specified in the Illinois Uniform Commercial Code as in effect on the date of this Order.

12. **Miscellaneous.** This Order shall be governed by and construed in accordance with the Uniform Commercial Code and other applicable laws in effect in the State of Illinois as of the date hereof. If any provision of this Order is determined to be illegal, against public policy or otherwise unenforceable, it will not invalidate or render unenforceable any other provision hereof, and each such provision shall at all times be considered separate and severable in this regard.