

MASTER SUPPLIER TERMS AND CONDITIONS

ARTICLE 1 **SCOPE**

1.1 General Application. Unless otherwise expressly agreed to in writing by both parties, these terms and conditions shall apply to all transactions between Helm Promotions, Inc. ("Helm") and Supplier regarding the purchase and sale of products, goods and services manufactured or produced by Supplier (the "Products"). Without limiting the generality of the foregoing, the terms and conditions set forth herein shall apply to the Purchase order and other documents of purchase (collectively, the "Purchase Order(s)") which Helm may place with Supplier for Products after the date of the Purchase Order, and all order acknowledgments ("Order Acknowledgements") and other documents issued by Supplier to Helm after the date of the Purchase Order with respect to the purchase of Products. These terms and conditions shall apply to all Purchase Orders and Order Acknowledgments and other documents of Supplier, regardless of whether or not these terms and conditions are expressly referenced in such Purchase Order or an Order Acknowledgment and other documents issued by Supplier.

1.2 Additional and/or Inconsistent Terms. Unless otherwise expressly agreed to in writing by both parties, no inconsistent or additional term or condition in any document delivered by Supplier shall be applicable to a transaction between Helm and Supplier, unless the terms are additional terms and are expressly accepted in writing by Helm.

ARTICLE 2 **OFFER AND ACCEPTANCE OF THIS PURCHASE ORDER**

2.1 Issuance of Purchase Order. This Purchase Order shall be deemed an offer to purchase Products on the terms and conditions set forth in the Purchase Order and herein. Helm may rescind, withdraw or revoke such offer to purchase at any time prior to acceptance by Supplier. In order to accept Helm's offer set forth in the Purchase Order, Supplier must, within forty-eight (48) hours of its receipt of the Purchase Order, send Helm an Order Acknowledgment via the Helm Supplier Portal. Thereafter, Supplier shall promptly supply such Products to Helm on the terms and conditions described in the Purchase Order. Any modifications or additional terms and conditions included in the Order Acknowledgment shall not become effective unless and until Helm notifies Supplier in writing that the proposed modifications and/or additions are acceptable.

2.2 Delays or Non-delivery. If, after Supplier has transmitted an Order Acknowledgment to Helm, Supplier finds that the Products cannot be delivered within the term specified in the Purchase Order, Supplier will promptly notify Helm and advise Helm of the revised delivery date. Helm shall then have the option (in its sole discretion) of terminating the Purchase Order without obligation for payment or of accepting the revised delivery date. In the event of delays in delivery due to a cause which constitutes Force Majeure (as described below), the date of delivery shall be extended for a period

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equal to the time lost by reason of such occurrence; provided, however, Helm may, at its option, cancel the Purchase Order, and any appropriate cancellation charges will be negotiated between the parties, subject to the provisions of Paragraph 3.6 below.

ARTICLE 3

OTHER STANDARD TERMS AND CONDITIONS OF SALE

3.1 Title and Risk of Loss. Unless the Purchase Order specifies otherwise, title to and risk of loss for all Products delivered hereunder shall pass to Helm's customer (the "Customer") at FOB destination (i.e. customer's "ship to" address contained in the Purchase Order), notwithstanding any contrary term in Supplier's documents. Risk of loss for nonconforming or rejected Products shall remain with Supplier.

3.2 Inspection. All Products shall be subject to inspection by Helm and/or its Customer. Payment for any Products shall not constitute an acceptance thereof or a waiver of inspection rights, and said Products shall remain subject to the inspection rights of Helm and/or its Customer.

3.3 Rejection and Return of Products. Helm and its Customer shall have the right to reject and return Products, in whole or in part and at any time if any Products are found to be defective, or not in accordance with specifications, designated quantities or any term of the Purchase Order. Supplier shall bear all fees, costs and expenses associated with the storage, maintenance and transportation of rejected Products. If at any time after inspection, a defect not normally discoverable by visual inspection becomes apparent, Helm and/or its Customer may reject the defective Products. Rejected Products shall not be replaced or cured except upon receipt by Supplier of a replacement Purchase Order or purchase schedule from Helm which Helm may deliver or withhold in its sole discretion. Supplier shall promptly reimburse Helm and/or its Customer for the cost of inspecting rejected Products.

3.4 Delivery. Supplier shall deliver Products to the Customer at the address, in the quantities and on the dates specified in the Purchase Order. On partial or periodic shipments, a 5% over or under shipment is permitted. However, quantities in excess of the total order will be returned at Supplier's expense. Helm requires, and Supplier shall meet, 100 percent on-time deliveries. Helm and/or its Customers may reject any deliveries made in advance of or on any date after the date of delivery specified in the Purchase Order. Supplier will not charge Helm or its Customers for any costs, expenses or other amounts resulting from the restocking, packing, crating, freight, express, cartage of returned Products or packages. Each package delivered must be individually numbered as well as labeled with Helm's Purchase Order number and/or contract number. Except as otherwise clearly stated on a Purchase Order, all Products must be shipped prepaid with costs of transportation included in Supplier's invoice. Helm reserves the right to select Supplier's method of shipment and the carrier to be used by Supplier for shipment of the Products to Helm's Customers.

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3.5 Packing and Invoicing. Supplier shall include with each shipment an itemized packing list, clearly indicating Helm's Purchase Order number, quantity shipped, Helm's part number and the number of packages included in the shipment. Each package must be numbered and labeled with Helm's Purchase Order number. Invoices, shipping notices, and bills of lading must include the Purchase Order number and Product number(s) and shall be mailed within one business day after shipment, unless Helm specifies a different time, to the address specified in the Purchase Order. Supplier's name must not appear anywhere on or in the shipment without Helm's prior written permission.

3.6 Option of Helm to Terminate. Helm may at any time terminate the Purchase Order in whole or in part by written notice to Supplier. If the Purchase Order is terminated for the convenience of Helm, any claims of Supplier shall be settled on the basis of the reasonable incidental costs (excluding anticipated profits) Supplier has incurred in performance of the Purchase Order. If termination is occasioned by Supplier's breach of any condition of the Purchase Order, including these terms and conditions, Supplier shall not be entitled to any costs, and Helm shall have against Supplier all remedies provided by law and equity. Termination payments by Helm, if any, shall not be in duplication of prior payments, nor shall the sum of all such payments exceed the total Purchase Order price. All Products for which reimbursement is sought shall be the property of Helm. Supplier must submit any claim with respect to work performed prior to termination within ninety (90) days of the date of its receipt of Helm's written notice of termination. Helm may terminate any Purchase Order immediately without further obligations if (A) Supplier becomes insolvent; (B) a receiver is appointed for Supplier; (C) Supplier makes an assignment for the benefit of creditors or a similar transfer of assets; or (D) a bankruptcy petition is filed by or against Supplier.

3.7 Change in Specifications or Delivery. Helm reserves the right at any time to make changes in any drawings, descriptions, specifications and delivery dates as to Products covered by the Purchase Order. Any difference in price or time for performance resulting there-from shall be equitably adjusted and the Purchase Order schedule shall be modified in writing accordingly.

3.8 Prices and Taxes. Helm shall not be billed for any Products or services at prices higher than those stated in the Purchase Order. The price stated in the Purchase Order shall include all taxes except those taxes that Supplier is required by law to collect from Helm, including without limitation state or local sales or use tax. Sales and use taxes, if any, shall be separately stated in Supplier's invoices unless Helm has indicated in the Purchase Order that the Products ordered are exempt from such taxes.

3.9 Warranties. Supplier expressly warrants and guarantees that the goods, Products and services covered by the Purchase Order: (A) will be delivered free from any claim of any third party by way of infringement or the like; (B) will conform to the specifications, drawings, sample or other descriptions furnished or specified by Helm; (C) will conform to oral or written representations, affirmations, promises, descriptions, drawings, models or samples furnished by Supplier to Helm or to its Customers; (D) will be merchantable, of good material and workmanship and free from defect; and (E) will be

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fit for their intended use. These warranties are in addition to all other express or implied warranties, all of which run to Helm, its successors, assigns, agents and Customers, and users of the warranted product or service. No warranty hereunder may be waived, excluded or modified by course of dealing, course of performance, usage of trade or pursuant to any additional terms and conditions contained in any Purchase Order or in any Order Acknowledgment, confirmation, acceptance form or other agreement prepared and delivered by Supplier.

3.10 Insurance and Indemnifications.

A. Supplier shall indemnify, defend (using counsel acceptable to Helm) and hold harmless Helm, its successors, assigns, agents and customers, and users of goods or services covered by the Purchase Order (“Indemnitees”) from and against all claims, damages, losses and expenses, including attorneys’ fees (collectively, the “Losses”), arising out of Supplier’s provision of the Products or services furnished under the Purchase Order, including, without limitation, any Losses that Helm, its successors, assigns, agents and/or Customers may incur which arise out of the death or injury to any person, or damage to any property alleged to have resulted from such Products or services, or out of a breach by Supplier of any of its representations, warranties, agreements and/or covenants contained herein. Supplier agrees that it will, upon the tendering of any suit or claim to Supplier, defend the same at Supplier’s expense as to all costs, fees and damages. This indemnification shall apply whether Supplier or Helm defends such suit or claims and whether the Losses are caused by the sole or concurrent negligence of Supplier. Supplier’s indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Supplier, its agents and employees under Supplier’s documents, worker’s compensation acts, disability acts or other employee benefit acts.

B. Supplier also shall continuously maintain appropriate insurance for protection against the claims of all persons or entities in an amount as currently stated on the EMI Contract. Dollars per occurrence covering injury or death to one or more persons, and not less than Three Hundred Thousand (\$300,000) Dollars per occurrence covering property damage, insuring Indemnities against all liability that may accrue against them or any of them by reason of the sale by Helm to third parties of Products produced or partially produced by Supplier or as to which Supplier provided services of any nature. The insurance shall be placed with insurance carriers satisfactory to Helm and shall not be subject to cancellation or any material change except after thirty (30) days’ prior written notice to Helm. A certificate of insurance reflecting full compliance with these requirements, including the naming of Helm as an additional insured, shall be furnished annually to Helm, and no change in or cancellation of insurance shall be made by Supplier without written notice to Helm.

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3.11 Intellectual Property. Supplier shall indemnify, defend (using counsel acceptable to Helm) and hold harmless Indemnities from all claims, damages, judgments, expenses or losses, including attorneys' fees, resulting from any claims that the manufacture, use, sale or resale of any Products or services supplied under the Purchase Order infringe any patent, copyright, trademark or service mark. No limitation in Supplier's documents shall operate to reduce this indemnification. If the use or sale of any Products or services with respect to which Supplier is obligated to indemnify the Indemnities hereunder is enjoined, Supplier shall obtain for the Indemnities, at no expense to them, the right to use and sell such Products or services, or if such is not possible, shall substitute an equivalent Product or service acceptable to Helm and extend the indemnity in this Paragraph to Indemnities in respect of such equivalent item.

3.12 Potentially Harmful Materials. Supplier shall inform Helm of any toxic or potentially harmful materials used in the manufacture of Products purchased under the Purchase Order, and indemnify Helm from any liability arising out of any reasonable use of such Products. Supplier shall provide Material Safety Data Sheets as required by law.

3.13 Subcontracting. Supplier may not subcontract, assign or delegate all or part of the manufacture and supply of Products or performance of services under the Purchase Order unless it has obtained Helm's prior written approval; provided, however, that notwithstanding any such approval, Supplier shall nonetheless continue to be responsible to Helm for all of Supplier's obligations under the Purchase Order, including without limitation its liability for any breach.

3.14 Tools and Materials. Helm shall retain title to any designs, sketches, drawings, blueprints, patterns, dies, models, molds, tools, special appliances and materials ("Articles") furnished or paid for by Helm in connection with the Purchase Order. Articles shall be marked as property of Helm, shall be held at Supplier's risk, shall be properly insured (with loss payable to Helm) and shall be replaced by Supplier if lost or destroyed. Articles shall be used only for production of Products covered by the Purchase Order in the quantities specified and shall be returned to Helm or disposed of at the direction of Helm. Nothing in this Paragraph shall be construed as creating an obligation of Helm to furnish Articles for the Purchase Order, and Helm does not warrant or guarantee the accuracy or reliability of any Articles.

3.15 Remedies. The remedies herein reserved shall be cumulative and additional to any other remedies provided in law or equity. Supplier shall pay all damages incurred by Helm as a result of Supplier's breach of the Purchase Order including these terms and conditions, and any warranty, including without limitation consequential damages. Failure of Helm to insist in any one or more instances upon performance of any of these terms or conditions or any other Purchase Order shall not be construed as a waiver of future performance of any such term or condition, but the obligation of Supplier with respect thereto shall continue in full force and effect.

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3.16 Government Contracts. If Products or services are being purchased by Helm to fulfill the requirements of a government contract, Supplier agrees to accept and accommodate any additional or different terms imposed upon Helm by the applicable government authority.

3.17 Compliance with Laws. In connection with the provision of Products hereunder, Supplier shall comply with all applicable federal, state and local laws, executive orders, rules and regulations, including but not limited to the Occupational Safety and Health Act of 1970 as amended (“OSHA”), Toxic Substances Control Act as amended (“TOSCA”), Equal Employment Opportunity Act and the Regulations and Standards issued pursuant thereto, and the Fair Labor Standards Act of 1938 as amended (“FLSA”). Supplier also shall supply Helm at the time of making its first delivery and at any subsequent time relevant to a Purchase Order, with such information as may be necessary to permit Helm to comply with the Federal Hazard Communication Standard as set forth in 29 CFR 1910, 1200. Supplier’s failure to supply such data shall be conclusively presumed to mean that such data is not required for the Product supplied. Further, Supplier warrants that all Products will be in compliance with the Consumer Product Safety Act (“CPSA”), the National Highway Safety Act (“NHTSA”) and regulations issued pursuant thereto.

3.18 Communications with Customers. Supplier shall not communicate directly with the Customer identified in the Purchase Order without Helm’s prior written consent.

3.19 Helm Trademarks. All of the logos and trademarks contained in any Purchase Order are the property of Helm and shall not be used without the express written consent of Helm.

3.20 Access to Supplier’s Facility. Upon a minimum of ten (10) days’ advance notice by Helm, Helm’s authorized representatives shall be provided access to Supplier’s and/or Supplier’s sub-vendor’s facilities to obtain information on production progress, to determine status, and to witness routine tests and inspections. Such access will not include any restricted areas where development work of a proprietary nature is being conducted. Supplier shall be notified of, and may be represented at, all tests that may be made. The parties shall agree upon the conditions of any tests.

3.21 Excess or Incorrect Materials. Products delivered in error or in excess of the quantity called for in a Purchase Order may be returned at Supplier’s expense.

3.22 Payments.

A. Except to the extent otherwise agreed to by the parties, Helm shall pay invoiced amounts within sixty (60) days of the date Supplier’s correct invoice is received by Helm, provided that Products have been received and accepted by Helm or its Customer as contemplated herein.

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B. Helm shall have the right to offset against any payments owed by it to Supplier, any amounts that Supplier may owe to Helm.

ARTICLE 4

ELECTRONIC DATA INTERCHANGE

4.1 Scope. Helm and Supplier acknowledge that they may (but shall not be required to) agree to exchange on an electronic basis, all transaction documents between them.

4.2 Charges. All electronically exchanged documents contemplated by the Purchase Order shall be channeled through one or more third party networks ("TPNs"). Helm shall arrange and pay for transmission of electronic documents between it and its TPN. Supplier shall arrange and pay for transmission of electronic documents between Helm's TPN and Supplier. Helm and Supplier reserve the right to change TPNs upon sixty (60) days' written notice. Each party agrees to provide to the other whatever access codes are required to establish necessary connections.

4.3 Security. Each party shall adopt and maintain reasonable security procedures to ensure (A) that documents transmitted electronically are authorized; (B) that its business records and data are protected from improper use; and (C) that the security of access codes and electronic identification codes is maintained.

4.4 Acknowledgments. Upon receipt of an electronic document, the receiving party shall promptly issue an acknowledgment to the sending party. Such acknowledgment is solely for the purpose of acknowledging receipt of electronic documents.

4.5 System Operations. Each party, at its own expense, shall provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive documents electronically.

4.6 General Provisions.

A. All terms and conditions set forth herein shall be applicable if the Purchase Order is placed electronically with Supplier by Helm.

B. The parties agree that a document properly transmitted electronically hereunder, including a party's identification, shall be deemed to be a signed writing and, when printed from the electronic records established and maintained by a party in the normal course, shall be deemed to constitute an original document for all legal purposes, and neither party shall contest the validity or enforceability of any such signed writing under the provisions of Section 2-201 (Formal Requirements; Statute of Frauds) of the Michigan Uniform Commercial Code or other applicable law relating to whether certain agreements

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are to be in writing and signed by the party to be bound thereby. Further, such signed writings, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings, shall be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form, and neither party shall contest the admissibility of a copy of any such signed writing under either the business records exception to the hearsay rule or the best evidence rule on the basis that it was not the original or was not maintained in the documentary form.

C. Neither party shall be liable to the other for any incidental or consequential damages arising from or as a result of the electronic transmission of the Purchase Order, Order Acknowledgments, or other data hereunder. Neither party hereunder shall be liable for failure to comply with the provisions of this Article 4 due to causes beyond its control, including failure of action of computers, TPNs, or communication circuits.

D. In the event either party receives an electronically exchanged document that is obviously garbled in transmission or improperly formatted, that party shall immediately notify the TPN and the other party for retransmission. If this does not remedy the situation, the receiving party shall notify the sending party for joint resolution of the transmission.

ARTICLE 5

MISCELLANEOUS

5.1 Survival of Representations and Warranties. All representations and warranties of the parties made herein shall survive the execution, delivery and termination or expiration of the Purchase Order.

5.2 Binding Effect. These terms and conditions shall be binding upon and inure to the benefit of the heirs, successors, administrators, legal representatives and permitted assigns, as the case may be, of the parties.

5.3 Governing Law. The Purchase Order shall be interpreted and enforced under the laws of the State of Michigan applicable to contracts made and to be performed entirely within such State without giving effect to choice of law principles of such State.

5.4 Paragraph Headings. The paragraph headings herein are inserted merely for the convenience of the parties and shall not be used to construe or modify the terms set forth herein in any respect.

5.5 Partial Invalidity/Severability. If any provision of the Purchase Order is held by a court of competent jurisdiction to be invalid, void or unenforceable in any manner, the remaining provisions shall nonetheless continue in full force and effect

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without being impaired or invalidated in any way. In addition, if a court of competent jurisdiction may modify any provision of the Purchase Order such that it may be enforced, then that provision shall be so modified and as modified shall be fully enforced.

5.6 Entire Agreement. The Purchase Order and these terms and conditions contain the entire understanding of the parties with respect to its subject matter, and supersede all prior and contemporaneous agreements, understandings and negotiations. No parol evidence of prior or contemporaneous agreements, understandings or negotiations shall govern or be used to construe or modify the Purchase Order. No modification or alteration of the Purchase Order or these terms and conditions shall be deemed effective unless in writing and signed by the parties.

5.7 Notice. Any notice or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally or sent by confirmed facsimile transmission, telex, telecopy or other wire transmission (with request for confirmation in a manner typical with respect to communications of that type), overnight air courier (postage prepaid), or registered or certified mail (postage prepaid with return receipt requested) addressed to the respective party at their address specified in the Purchase Order. Unless otherwise specified herein, notices shall be deemed received (A) on the date delivered, if delivered personally, by wire transmission or confirmed facsimile transmission; (B) on the next business day after deposit with an overnight air courier; or (C) three (3) business days after being sent, if sent by registered or certified mail.

5.8 Force Majeure.

A. Excused Performance. Each party will be excused for its failure or delay in performance at any time during which performance is prevented by events beyond its reasonable control and without its failure or negligence (Force Majeure), which events may include, but will not be limited to: (1) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, accident, storm, flood or similar occurrence; (2) an act of public enemy, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence; or (3) a strike, lockout, or similar industrial or labor action.

B. Reasonable Efforts. This Article will not relieve the non-performing party from using reasonable efforts to overcome or remove such Force Majeure with all reasonable dispatch. A party claiming the benefit of this Article will give prompt notice to the other party of the events giving rise to the assertion and the estimated duration thereof and will keep such other party reasonably advised as to the progress of such party's attempts to overcome or remove such Force Majeure.

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