

CONFIGURE, LLC

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. Applicability

(a) These terms and conditions of purchase (these “**Terms**”) are the only terms which govern the purchase of the goods (“**Goods**”) and services (“**Services**”) by Configure, LLC, dba Configure Brands (“**Buyer**”) from the seller named on the Purchase Order (“**Seller**”). By accepting a Purchase Order, Seller accepts these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

(b) The purchase order provided by Buyer (the “**Purchase Order**”), together with any addendums, exhibits, or schedules attached thereto, and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Seller’s general terms and conditions regardless of whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly constitutes Seller’s acceptance of the terms of this Agreement. Fulfillment of or other performance under this Purchase Order constitutes acceptance of these Terms.

2. Delivery Date and Delivery Location. Seller shall deliver the Goods in the quantities and on the date(s) specified in the Purchase Order or as otherwise agreed in writing by the parties (the “**Delivery Date**”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date. All Goods shall be delivered to the address specified in the Purchase Order (the “**Delivery Location**”) during Buyer’s normal business hours or as otherwise instructed by Buyer. Seller shall provide the Services to Buyer as described and in accordance with the dates or schedule set forth on the Purchase Order and in accordance with these Terms.

3. Quantity. Seller shall deliver the quantities of the Goods specified in the Purchase Order. If Seller delivers more or less than the quantity of Goods specified in the applicable Purchase Order, Buyer may reject all Goods or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted up or down, as applicable, on a pro-rata basis.

4. Shipping Terms. Delivery shall be made at the Delivery Location. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall promptly provide Buyer all shipping documents, including the commercial invoice, packing list, and any other documents necessary to release the Goods to Buyer.

5. Title and Risk of Loss. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location. Notwithstanding the foregoing, if Seller is providing Services to Buyer under the Agreement, title to any equipment, tooling, molds, raw materials and finished goods related to the provision of Services shall remain with Buyer and Buyer reserves the right, in case of a breach of this Agreement as determined by Buyer, to reclaim any equipment, tooling, molds, raw materials and finished goods from Seller upon 24 hours’ notice.

6. Packaging. Seller shall properly pack, mark and ship Goods as instructed by Buyer and otherwise in accordance with applicable law and industry standards and shall provide Buyer with shipment documentation

showing the Purchase Order number, the quantity of pieces in shipment, the number of cartons or containers in shipment, Seller's name, the number, and the country of origin.

7. Inspection and Rejection of Nonconforming Goods. Buyer has the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods at any time if it determines that any of the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (a) terminate this Agreement in its entirety; or (b) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under this Agreement, and Buyer shall have the right to conduct further inspections and require further replacement after Seller has carried out its remedial actions. Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller's delivery of nonconforming or defective Goods.

8. Seller's Obligations Regarding Good and Services. In providing Goods or Services, Seller shall:

(a) obtain, and at all times during the term of this Agreement, maintain, all necessary licenses and consents and comply with all relevant laws applicable to providing the Good and the provision of the Services;

(b) maintain complete and accurate records relating to providing the Goods and the provision of the Services under this Agreement, including records of the time spent and materials used by Seller in providing the Goods and Services in such form as Buyer shall approve. During the term of this Agreement and for a period of three (3) years thereafter, upon Buyer's written request, Seller shall allow Buyer to inspect and make copies of such records and interview Seller personnel involved with providing the Goods and Services;

(c) obtain Buyer's written consent, which may be given or withheld in Buyer's sole discretion, prior to entering into agreements with or otherwise engaging any person or entity, including all subcontractors and affiliates of Seller, other than Seller's employees, to provide any Goods or Services to Buyer (each such approved subcontractor or other third party, a "**Permitted Subcontractor**"). Buyer's approval shall not relieve Seller of its obligations under the Agreement, and Seller shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were Seller's own employees. Nothing contained in this Agreement shall create any contractual relationship between Buyer and any Seller subcontractor or supplier, including Permitted Subcontractors;

(d) require each Permitted Subcontractor to be bound in writing by the confidentiality provisions of this Agreement, and, upon Buyer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to Buyer;

(e) ensure that all persons and entities, whether employees, agents, subcontractors, or anyone acting for or on behalf of the Seller, are properly licensed, certified or accredited as required by applicable law and are suitably skilled, experienced and qualified to provide the Goods or perform the Services;

(f) ensure that all of its equipment used in providing the Goods and the provision of the Services is in good working order and suitable for the purposes for which it is used, and conforms to all relevant legal standards and standards specified by the Buyer; and

(g) keep and maintain any Buyer equipment in its possession in good working order and shall not dispose of or use such equipment other than in accordance with the Buyer's written instructions or authorization.

In addition to any remedies that may be provided under this Agreement, Seller shall indemnify Buyer against any losses, claims, damages, and costs and expenses related or attributable to Seller's failure to comply with the obligations set forth in this Section 8.

9. Price. Buyer shall purchase the Goods from Seller at the prices set forth in the Purchase Order, as it may be modified from time to time by mutual agreement of the Parties (the "**Price**"). The Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use, or excise taxes. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Buyer. Seller shall submit all invoices prior to the date that is one hundred and eighty (180) days after the completion of the applicable sale. If Seller fails to submit the invoice by such date, Buyer shall be relieved of any payment obligation associated with such stale invoice.

10. Payment Terms. Seller shall issue an invoice to Buyer after the completion of delivery of the Goods or the completion of the Services. Buyer shall pay all properly invoiced amounts in accordance with the payment terms set forth in the Purchase Order, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars. Payment of an invoice does not constitute acceptance of the Goods.

11. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

12. Warranties. Seller represents, warrants, and covenants to Buyer that:

(a) for a period of eighteen (18) months from the Delivery Date, whichever is greater, all Goods will: (i) be free from any defects in workmanship, material, and design; (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Buyer, if any; (iii) be fit for their intended purpose and operate as intended; (iv) be merchantable; (v) be free and clear of all liens, security interests, or other encumbrances; and (vi) not infringe or misappropriate any third party's patent or other intellectual property rights;

(b) it shall provide the Goods and perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

(c) no claim, lien, or action exists or is threatened against Seller that would interfere with Buyer's use or sale of the Goods.

These warranties survive any delivery, inspection, acceptance, or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer.

13. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

14. General Indemnification. Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified

Party (collectively, “Losses”), relating to (i) bodily injury, illness, or death of any person, or damage to or loss of any property, to the extent caused by or resulting from (a) Seller’s acts or omissions, (b) the acts or omissions of Seller’s employees, agents, subcontractors, or representatives, or (c) any defect in the Goods or the performance of the Services; (ii) Seller’s breach of this Agreement; or (iii) Seller’s failure to comply with applicable laws. Seller shall not settle, compromise, or consent to the entry of any judgment with respect to any claim for which indemnification is sought without the prior written consent of the Indemnified Party, unless such settlement (x) includes an unconditional release of the Indemnified Party from all liability arising out of such claim, (y) does not impose any admission of liability, wrongdoing, or fault on the part of the Indemnified Party, and (z) does not impose any obligation or restriction on the Indemnified Party other than the payment of amounts fully covered by Seller.

15. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify and hold harmless Buyer and any Indemnified Party against any and all Losses arising out of or in connection with any claim that Buyer’s or Indemnified Party’s use or possession of the Goods or use of the Services infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not settle, compromise, or consent to the entry of any judgment with respect to any claim for which indemnification is sought without the prior written consent of the Indemnified Party, unless such settlement (a) includes an unconditional release of the Indemnified Party from all liability arising out of such claim, (b) does not impose any admission of liability, wrongdoing, or fault on the part of the Indemnified Party, and (c) does not impose any obligation or restriction on the Indemnified Party other than the payment of amounts fully covered by Seller.

16. Insurance. During the term of the Order, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including but not limited to product liability) with limits no less than \$3,000,00 for each occurrence with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in this Section 16. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with ten (10) days’ advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers, Buyer, and any other Indemnified Party.

17. Termination. In addition to any remedies that may be provided under this Agreement, Buyer may terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Goods, if Seller has not performed or complied with any of the terms and conditions of this Agreement, in whole or in part. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Buyer may terminate this Agreement upon written notice to Seller. If a Force Majeure Event affecting Seller’s performance of this Agreement continues for more than 30 consecutive days, then Buyer may terminate this Agreement upon written notice to Seller. If Buyer terminates this Agreement for any reason, Seller’s sole and exclusive remedy is payment for the Goods received and accepted by Buyer prior to the termination.

18. Confidential Information. All non-public, confidential, or proprietary information of the Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer’s request, Seller shall promptly return or destroy all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

19. Intellectual Property.

(a) Intellectual Property.

(i) All designs, specifications, drawings, reports, data, works of authorship, inventions, discoveries, developments, improvements, technology, know-how, and any other intellectual property, whether or not patentable, copyrightable or registrable (collectively, "Developments") that are conceived, created, authored, reduced to practice, or otherwise generated, in whole or in part, by Seller (including its employees, agents, contractors or representatives), either individually or jointly with Buyer, in connection with or as a result of the performance of Seller's obligations under this Agreement, shall be and remain the sole and exclusive property of Buyer.

(ii) Seller hereby irrevocably assigns, transfers, and conveys to Buyer all of Seller's right, title and interest in and to all Developments, including all intellectual property rights therein, without additional consideration. To the extent that any such rights cannot be assigned by operation of law, Seller hereby grants to Buyer an exclusive, irrevocable, perpetual, worldwide, royalty-free, fully paid-up license (with rights to sublicense) to use, make, sell, offer for sale, import, copy, modify, create derivative works from, and otherwise exploit such Developments for any purpose.

(iii) Seller shall, at Buyer's request and expense, execute and deliver all instruments and take all further actions reasonably necessary to perfect, register, or enforce Buyer's ownership rights in the Developments and associated intellectual property.

(iv) Seller shall ensure that each of its employees, agents, contractors, and representatives involved in the performance of this Agreement has executed and is bound by written agreements sufficient to give effect to the assignments and obligations set forth in this Section.

(v) Nothing in this Agreement shall be construed as granting Seller any license, right, or interest in Buyer's intellectual property except as expressly authorized in writing by Buyer.

(b) Designs, Tools, Molds, Etc. All designs, drawings, blue-prints, tools, dies, molds, patterns or printing plates required to perform under this Agreement, furnished by or paid for by Buyer, shall be the property of Buyer. Seller shall return the same to Buyer at the latter's request upon completion or termination of this Agreement, and the same shall not be copied or used by Seller without Buyer's written consent unless the copy or use is in furtherance of filling Buyer's purchase orders. Unless otherwise agreed herein, Seller, at its cost, shall supply all material, equipment, tools and facilities required to perform this Agreement. Any material, equipment, tools or other property furnished by Buyer or specifically paid for by Buyer shall be Buyer's property, shall be used by Seller solely in connection with providing the Goods or Services, and may on Buyer's demand be removed by Buyer. Seller shall use such property at its own risk and shall be responsible for all loss of or damage to the same or the property or person of Seller or any third party while in Seller's custody. Seller shall, at its cost, store and maintain all such property in good condition and repair. Buyer makes no warranties of any nature with respect to any such property, which is furnished "AS IS".

20. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

21. Survival. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) any provision that, in order to give proper effect to its intent, should survive such expiration or termination, including but not limited to, all provisions related to indemnification or confidentiality, shall survive the expiration or earlier termination of this Agreement.

22. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Purchase Order or

to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. Amendments. No amendment to, or modification of, this Agreement is effective unless it is in writing and signed by each Party.

24. Waiver. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

25. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

26. Assignment. Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. Buyer may assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Seller.

27. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

28. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

29. Choice of Law. This Agreement, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of Ohio, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Ohio.

30. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, and all contemplated transactions, in any forum other than the courts of the State of Ohio or the corresponding federal court, as applicable, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

31. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

32. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

33. Force Majeure. Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism) (each, a "**Force Majeure Event**"). Seller's financial inability to perform, changes in cost or availability of materials, components or services, market conditions or supplier actions or contract disputes will not excuse performance by Seller under this Section. Seller shall give Buyer prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Seller shall use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized and resume full performance under this Agreement.

34. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from this Agreement.

35. Specific Performance. Seller acknowledges and agrees that the Goods and Services to be provided under this Agreement are unique and that Buyer would suffer irreparable harm for which monetary damages would be an inadequate remedy in the event of any breach or threatened breach by Seller. Accordingly, in addition to any other rights or remedies available at law or in equity, Buyer shall be entitled to seek specific performance, injunctive relief, and other equitable remedies to enforce Seller's obligations under this Agreement, without the necessity of proving actual damages or posting any bond or other security, to the fullest extent permitted by applicable law. Seller agrees not to assert as a defense that an adequate remedy at law exists or that an award of specific performance or other equitable relief is not appropriate. The rights and remedies set forth in this Section are cumulative and in addition to, and not in lieu of, any other rights or remedies available to Buyer.