



TERMS AND CONDITIONS FOR PURCHASE ORDERS – GOODS FOR RESALE

1. Definitions. "Agreement" means a written agreement, if any, signed by PetSmart and Vendor regarding the purchase of Products. **"Business Terms"** means the Agreement and the PO, collectively and individually, as the context requires. **"PetSmart"** means PetSmart, Inc. or its affiliates or wholly-owned subsidiaries. **"PetSmart Documents"** means the Business Terms and any related policies or documentation that PetSmart provides Vendor from time to time or that is available to Vendor on PetSmart's website. **"PO"** means a purchase order for Products, which includes these Terms and Conditions for Purchase Orders and any schedules attached to such PO. **"Product(s)"** means the goods or services, collectively and individually, as the context requires, provided by Vendor under a PO, together with related packaging, labeling, documentation, transportation and anything else furnished by Vendor with respect to such goods, and any and all deliverables provided by Vendor under a PO with respect to such services. **"Vendor"** means the person or entity to which the PO has been issued, and its related entities, affiliates, agents, representatives and subcontractors.

2. Agreement for Purchase of Products. All purchases of Products by PetSmart will be governed by the Business Terms. In the event of a conflict between the PO and an Agreement, the Agreement will control. (For clarity, if the PO does not conflict with the Agreement but does contain additional or more specific terms or provisions than the Agreement, such additional or more specific terms and provisions will continue to apply to Vendor.) If the parties have not executed an Agreement, the PO will control. The Business Terms constitute the complete and final written agreement between PetSmart and Vendor with respect to the Products and supersede all other agreements and understandings between the parties regarding the Products. No waiver, modification, or amendment of the Business Terms will be valid unless in writing and signed by authorized representatives of both parties, subject to Section 9. All terms of any purchase order or similar document provided by Vendor, including, but not limited to, any pre-printed terms thereon or any terms that appear on or are accessible through Vendor's websites or apps, that are inconsistent, add to, or conflict with the Business Terms, will be null and void and of no legal force or effect. In addition, neither acceptance by nor delivery to PetSmart of all or part of the Products ordered, nor payment therefor, will constitute acceptance by PetSmart of any such different or additional terms and conditions that may be contained in Vendor's acknowledgment, acceptance, confirmation, invoice, or other writing, regardless of whether Vendor's acceptance of the PO is conditioned upon PetSmart's assent to such terms and conditions. Any written indication of acceptance of the Business Terms, commencement of any work or the performance or shipment of conforming or non-conforming Products under a PO will constitute acceptance by Vendor of the PO and all the Business Terms.

3. No Purchase Requirement. Except as may be set forth in the description of Products purchased on the PO, PetSmart does not commit or guaranty the purchase of any Products from Vendor, including any minimum quantity or volume.

4. Delivery and Force Majeure; Inspection; Title and Risk of Loss. Vendor will deliver the Product in accordance with the PetSmart Documents. For Products for which PetSmart is the importer of record, (i) risk of loss shall pass from Vendor to PetSmart F.O.B. port of export, and (ii) title to the Products shall pass from Vendor to PetSmart upon customs clearance of the Products at the port of entry in the country of final destination ("Customs Clearance"). For Product for which PetSmart is not the importer of record, title and risk of loss shall transfer to PetSmart Delivered Duty Paid (D.D.P. - Incoterms® 2010) to a destination specified in the PO and, if the destination is not specified in the PO, such destination shall be deemed to be the PetSmart distribution center or retail store where such Products are to be delivered. Notwithstanding the foregoing, PetSmart may at its own option take delivery of all or any part of the Products at Vendor's facility. Time of delivery or performance is of the essence, and PetSmart's stated delivery or performance date cannot be extended for any reason, including delays in manufacture or shipment that Vendor cannot control. Vendor will not, however, be liable for any non-performance or delay in performance caused solely by a strike, lockout, riot, war, insurrection, act of God or public enemy, if Vendor immediately notifies PetSmart of the event and gives PetSmart a detailed description of the non-performance or delay that will be caused by such event. PetSmart will then have the right to terminate the Business Terms, without liability to Vendor. PetSmart will have the right to inspect the Product upon receipt, notwithstanding any payments or acceptance of previously shipped Products, and will, within a reasonable time, notify Vendor of any claim relating to condition, quality, shortages, non-conformance or grade of the Product. PetSmart's inspection or failure to inspect the Product will not relieve Vendor of any claim related thereto. Unless otherwise agreed in writing, title and risk of loss of all Products will pass to PetSmart only upon delivery to the specified destination. Vendor will reimburse PetSmart for any costs, damage or expense incurred by PetSmart arising or relating from the sale by PetSmart of any Product that does not conform to Vendor's warranties and the PetSmart Documents.

5. Price and Payments. Unless otherwise expressly stated in the Business Terms, the price specified in the PO includes (i) all taxes and duties of any kind that Vendor is required to pay with respect to the Products (including applicable customs duties), and (ii) all charges for packaging, transportation, storage and insurance. Vendor will submit an invoice to PetSmart for Products delivered to PetSmart upon delivery or otherwise in accordance with the PetSmart Documents. Such invoice will reference the applicable PO. Vendor warrants that the prices set forth in the PO are not higher than the lowest prices charged by Vendor to any other customer for the Products. Except as provided in an applicable PO, PetSmart will not be required to pay any late charge, interest, finance charge or similar charge. PetSmart's payment of the purchase price does not indicate its acceptance of the Products.

Payment terms, including discount periods, will be seventy (70) days from the latest of (i) the scheduled date for delivery or performance; (ii) the actual date of performance or delivery of conforming Products; and (iii) the date of Vendor's invoice. Vendor waives all invoices not delivered to PetSmart within 180 days of such date. Unless the PO specifies otherwise, a damage allowance (deduction) of two percent (2.0%) for Products classified by PetSmart as "hard-goods," two and one-half percent (2.5%) for Products classified by PetSmart as "specialty," and one and one-half percent (1.5%) for Products classified by PetSmart as "Consumables" shall be applied to each PO.

6. Excess, Installment, and Early Deliveries. If Vendor delivers more Products than PetSmart ordered, then, unless PetSmart agrees otherwise in writing, PetSmart will not have to pay for the excess. Unless PetSmart agrees otherwise in writing, Vendor will deliver all of the Products in a single delivery and not in installments. PetSmart's acceptance of a delivery containing less than the required quantity of Products will not relieve Vendor of its obligation to deliver the balance of the ordered Products at the price and on the other terms specified in the PO. If Vendor delivers the Products before the scheduled delivery date, PetSmart may, at Vendor's expense and risk, either store them or return them to Vendor. PetSmart's acceptance of an early delivery will not change the payment terms.

7. Representations and Warranties about Vendor. Vendor represents and warrants to PetSmart that (i) Vendor has all necessary experience, personnel, qualifications, expertise, authority, licenses and permits to enable it to perform its obligations under the Business Terms, (ii) the Business Terms are the valid and binding obligations of Vendor, enforceable against Vendor in accordance with their terms, (iii) Vendor is a solvent, going concern, and (iv) Vendor has not offered or given, will not offer or give, and will not solicit or accept, any gratuity or thing of value to or from any PetSmart employee, agent or representative.

8. Representations and Warranties about the Products. Vendor represents and warrants that the Products will: (a) comply with all applicable federal, state, provincial and local laws, rules and regulations or judicial or administrative orders, judgments or decrees governing the Products, including without limitation, their manufacture, packaging, pricing, labeling, sale, use, transportation, importation or exportation, including, without limitation, California's Proposition 65 and other similar laws, rules, regulations, standards, orders and directives, and the Fair Labor Standards Act of 1938 and the Occupational Safety and Health Act of 1970, as amended; (b) be free from defects in design, workmanship, materials and hazards to life, animal or property; (c) conform to any warranty, description, sample, data, drawing, representation, specification or documentation provided to PetSmart or set forth in the PetSmart Documents; (d) be suitable and fit for their intended purpose; (e) not infringe or encroach upon any other party's personal, contractual or property rights, including without limitation, patents, trademarks, trade names, copyrights, rights of privacy, trade secrets and/or other intellectual property rights. Further, Vendor represents and warrants that it is not subject to or bound by any agreement that will or may be violated by the provision of the Products as provided in the applicable PO. In addition to the representations and warranties herein, Vendor assigns to PetSmart any manufacturer's indemnities and warranties (both express and implied). Upon PetSmart's request, Vendor will give PetSmart certificates of compliance with applicable laws, rules, regulations, standards, orders or directives. Vendor's warranties extend to future performance under a PO with respect to the Products and will survive inspection, tests, acceptance, and payment. Vendor will adhere to PetSmart's Supplier Code of Conduct in connection with Product delivery or performance under a PO, which Supplier Code of Conduct is available at www.petsmart.com.

9. Changes. Notwithstanding Section 2 herein, PetSmart may at any time, by written notice to Vendor, change the PO as to (i) designs or drawings of, or specifications for, the Products, (ii) time or place of delivery or performance, (iii) method of packing or shipment, or (iv) the quantity or extent of the Products. If this causes a change in Vendor's cost or time of performance, PetSmart will consider an equitable adjustment in the price or time for delivery or performance, or both, if Vendor gives PetSmart a written request justifying an adjustment within 20 days after PetSmart notifies Vendor of the change. If an adjustment is not agreed upon, PetSmart may withdraw the change to the PO or Vendor may decline to provide the Products subject to the change.

10. PetSmart's Rights. Without limiting other rights and remedies available to it, PetSmart may, at its option, (i) return nonconforming Products to Vendor, at Vendor's risk and expense, and require Vendor either to give PetSmart full credit against the price, or promptly to repair or replace the Products at Vendor's risk and expense; (ii) retain the Products and set off losses against any amount due Vendor; or (iii) repair or replace the Products and charge Vendor with the expense. In addition to PetSmart's rights set out in the Business Terms, PetSmart has all of the other rights and remedies that the law gives to buyers, including the right to recover incidental and consequential damages resulting from any breach by Vendor. PetSmart will not lose any right just because it does not exercise it. PetSmart will have the full statutory period of limitations to bring any action arising out of PetSmart's agreement with Vendor. A reasonable time for PetSmart to notify Vendor of any breach is not less than two years from when PetSmart discovers the breach.

11. Work on Premises. If the PO includes the performance of services or delivery or installation of Products by Vendor, and involves operations by Vendor's employees or subcontractors on PetSmart's premises or the premises of a PetSmart customer, Vendor will: (i) at all times enforce strict discipline and maintain good order among all persons engaged in the activity on such premises and will cause Vendor's employees and subcontractors to comply with all fire prevention and safety rules and regulations in force at the premises and

required by law; (ii) keep such premises free from accumulation of waste materials and rubbish caused by its employees or subcontractors and upon completion promptly remove all of Vendor's equipment and surplus materials; and (iii) reimburse PetSmart for all reasonable costs and expenses incurred by PetSmart for repairs completed by PetSmart or its designee if Vendor damages any equipment or property of PetSmart or its customer, or causes any damage to any portion of PetSmart's or its customers' premises, either during or resulting from the delivery or performance of the Products by Vendor. Under no circumstances will Vendor conduct or permit any hazardous activity or handling any hazardous materials at PetSmart's or its customers' premises without first coordinating the details of such activity or handling with PetSmart.

12. Services. If the PO includes the performance of services, (i) Vendor is an independent contractor, and neither Vendor nor any of Vendor's employees or agents will be considered agents or employees of PetSmart; and (ii) Vendor will furnish, at Vendor's expense, all labor, materials, equipment, transportation, facilities and other items necessary to perform such services. Vendor represents and warrants that any of its employees or agents (including subcontractors) deployed in performing any such services will at all times be lawfully engaged under applicable US immigration laws and regulations.

13. Ownership of Work. Unless otherwise agreed to in writing by PetSmart, all documents, materials, designs, programs, code, software, specifications, drafts, advice, ideas, suggestions and any other pertinent data, including any derivatives thereof, in whatever form or media, specifically prepared for, produced or resulting from Vendor's provision of the Products ("**Work**") will become the exclusive property of PetSmart in perpetuity, throughout the universe, in all languages, formats and media, whether now known or hereafter devised or invented. All Work will, to the extent possible, be deemed a "work made for hire" under the federal Copyright Act of 1976, as amended, and all intellectual property rights related to such Work will vest in and be owned by PetSmart. To the extent that title to any such Work may not, by operation of law, vest in PetSmart, Vendor irrevocably and exclusively assigns all rights, title and interest in the Work to PetSmart. This license is in addition to all patent licenses impliedly granted to PetSmart as a purchaser of the Products.

14. Customs-Trade Partnership Against Terrorism. PetSmart participates in the US Customs-Trade Partnership Against Terrorism (C-TPAT) and is committed to engaging providers, vendors and consultants who have policies and procedures ensuring supply chain security. PetSmart requires that all its providers, vendors and consultants make reasonable efforts to have a security program that is in accordance with C-TPAT's minimum security requirements.

15. Indemnity. Vendor will indemnify, defend and hold harmless PetSmart, its directors, officers, employees, shareholders, agents, subsidiaries, affiliates and representatives ("**Indemnitees**") from and against any and all threatened or actual claims, losses, liabilities, damages, costs or expenses (including attorneys' and experts, fees and costs through all appeals) of any nature whatsoever and whether arising prior to, or after the commencement or termination of the Business Terms ("**Losses**"), arising out of or related to: (a) the Products, including, but not limited to, their manufacturing, packaging, pricing, labeling, sale or use, or any infringement by the Products of third-party intellectual property rights; (b) Vendor's breach of any provision of any of the PetSmart Documents; (c) any claim or threatened claim for personal injury, death or property damage or loss of any nature whatsoever arising from or related to any Product; (d) Vendor's violation of any applicable laws or regulations; or (e) any breach by Vendor of any of its obligations or warranties in favor of PetSmart. Vendor will defend, at its sole cost and expense, the Indemnitees in any action or proceeding arising out of any such Losses by counsel reasonably acceptable to Indemnitees and will promptly pay all costs and expenses arising in connection with such defense including attorneys' fees and expert witnesses' fees through all appeals.

16. Insurance. Vendor will maintain, at its sole cost and expense, during the term of the Business Terms and for at least five years thereafter (or if no such term is specified for at least three years after the date of the PO), the following types and amounts of insurance, with insurers with an A.M. Best rating of at least A- (Excellent), FSC VII, and authorized to conduct business in the United States and Canada:

- (a) a commercial general liability policy with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including, but not limited to, coverage for bodily injury, property damage, contractual liability and products liability/completed operations;
- (b) an automobile liability policy with limits not less than \$1,000,000 combined single limit;
- (c) workers' compensation insurance in the benefit amounts required by applicable law and an employer's liability policy with limits not less than \$1,000,000 per accident or occurrence;
- (d) if services are provided under the PO or in connection with goods sold under a PO, a professional liability or errors and omissions policy with limits not less than \$2,000,000 per occurrence and \$5,000,000 aggregate; and
- (e) additional to the policies above, a commercial umbrella or excess liability policy with limits not less than \$2,000,000 per occurrence.

Notwithstanding the foregoing, PetSmart may require Vendor to acquire additional or different insurance types or coverage amounts to the extent commercially reasonable in order to protect both PetSmart and Vendor from any and all claims and liabilities arising from or related to the PO and the goods or services provided under a PO. Such policies shall be issued by insurers that are reasonably satisfactory to PetSmart. Vendor's policies will provide a waiver of subrogation in favor of PetSmart. Upon PetSmart's written request, Vendor will name PetSmart as an additional insured on the policies on a primary and noncontributory basis. Vendor's policies will provide a waiver of subrogation in favor of PetSmart. Within 10 days after such request, Vendor will provide PetSmart with certificates of insurance for the policies required hereunder and send such certificates to certificates@petsmart.com. The insurance coverage provided for herein will not act to limit Vendor's liability under the Business Terms.

17. Confidentiality. As a result of its dealings with PetSmart, Vendor may have access to PetSmart's Confidential Information. "Confidential Information" is non-public information that, by its nature, ought to be treated as proprietary and confidential or that a reasonable person would conclude is confidential, which is disclosed by PetSmart, or its subcontractors or agents, to Vendor, orally, electronically or in tangible form. Vendor will not, without the written consent of PetSmart, its successors or assignees, disclose any Confidential Information to any person, firm, corporation, or other entity for any purpose whatsoever or use such information for any purpose not provided for in the PetSmart Documents, for a period of two years after it is disclosed. If there is a breach of this Section (either actual or threatened) by Vendor, PetSmart's remedies at law will be inadequate. Therefore PetSmart will have the right of specific performance or injunctive relief, or both, in addition to any and all other remedies and rights at law or in equity, and PetSmart's rights and remedies will be cumulative.

18. Publicity/Use of PetSmart Name. Vendor will acquire no right to use, and will not use, the name "PetSmart" (either alone or in conjunction with or as part of any other word or name) or any other name, mark, logo, design, product designations or other intellectual property of PetSmart or any of its related, affiliated or subsidiary companies: (i) in any advertising, publicity or promotion; (ii) to express or to imply any endorsement by PetSmart of Vendor's products, services or business; or (iii) in any other manner whatsoever (whether or not similar to uses prohibited by [i] and [ii] above) without PetSmart's express prior written consent, which may be withheld in its sole discretion. The terms of this paragraph will survive the expiration or termination of the Business Terms.

19. Remedies: Set-Off. In addition to the rights and remedies provided in the Business Terms, each party has all of the rights and remedies available to it under the Uniform Commercial Code as adopted in the State of Arizona; provided, however, that Vendor waives against PetSmart all rights to claim or collect punitive or exemplary, indirect, incidental, special or consequential damages, lost profits or loss of opportunity damages. The exercise of any rights or remedy provided for in the Business Terms will be without prejudice to the right of PetSmart to exercise any other right or remedy provided in the Business Terms or at law or in equity. All payments to be made by PetSmart to Vendor pursuant to the Business Terms are subject to set-off, deduction or offset by PetSmart of all sums due and owing PetSmart by Vendor.

20. Governing Law/Venue/Jury Trial Waiver. The PetSmart Documents will be governed and construed in accordance with the laws of the State of Arizona without regard to principles of conflicts of laws. In any action or proceeding between any of the parties arising out of or relating to the PetSmart Documents (or any of the transactions contemplated thereby), each of the parties: (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in Maricopa County, Arizona; and (b) agrees that all claims in respect of such action or proceeding will be exclusively heard by such courts. **EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, ANY RIGHT TO TRIAL BY JURY REGARDING ANY SUCH CLAIM.**

21. Data Security. (a) Vendor will comply with all applicable laws, regulations, and codes of practice in connection with the collection, processing, use and storage of data provided by PetSmart or PetSmart affiliates, customers, donors, vendors, or other third parties providing data to Vendor under the Business Terms (collectively, "PetSmart Data"). Vendor will implement and maintain reasonable physical, technical and organizational measures and safeguards in order to preserve the security and confidentiality of PetSmart Data against unlawful or unauthorized destruction, processing, disclosure, processing or access to, or accidental damage or loss of PetSmart Data. Without limiting the generality of the foregoing, where appropriate, and in accordance with industry standards and best practices, Vendor will implement and/or use network management and maintenance applications and tools, and fraud prevention, intrusion detection, and encryption technologies. At a minimum, all PetSmart data will be encrypted while in transit and will be transmitted using a secure transfer method (e.g. SFTP). PetSmart has the right to request an SSAE 16 SOC 2 service auditor's report, if applicable, at any time during performance under a PO or the term of an Agreement.

(b) If Vendor or any third party assisting Vendor (i) deliberately or inadvertently collects, uses, or discloses PetSmart Data in breach of this Section, or (ii) discovers, is notified of, or has reasonable awareness that an unauthorized access, acquisition, theft, disclosure or use of PetSmart Data has occurred or is likely to occur (each such event, an "Information Security Breach"), then Vendor will immediately notify PetSmart of such Information Security Breach and, at its own expense, investigate, remediate, and mitigate the effects of the Information Security Breach.

(c) Upon either the written request of PetSmart, at its discretion, or the expiration or termination of the Business Terms, Vendor will render unreadable or return to PetSmart, or any third party designated by PetSmart, within fifteen (15) business days, all copies, duplicates, summaries, abstracts or other representations of any PetSmart Data, without charge to PetSmart. For electronic media, "render unreadable" could include, but is not limited to, degaussing or using a FIPS compliant military-grade wipe program, and for hard-copy material "render unreadable" could include, but is not limited to, cross-cut shredding or incineration.