



# VENDOR BUYING AGREEMENT

TERMS & CONDITIONS

On the behalf of \_\_\_\_\_ I agree to the below terms and conditions:

**ACCEPTANCE** – Every purchase order, whether written, verbal, or electronically communicated to the Vendor, is subject to all terms and conditions of this Agreement. Any waiver, alteration or modification of the terms and conditions of an individual purchase order is not binding on True Value. True Value is not bound by printed or other material on the Vendor's acknowledgement forms, invoices or other documentation which attempt to impose conditions and terms in conflict with this Agreement or any purchase order.

**WARRANTY** – The Vendor (in addition to all warranties implied by law, none of which may be negated, restricted, limited, excluded or modified by the Vendor) warrants that all products and services shipped or provided to True Value, its Member stores, wholesale customers and other customers will be in strict accordance with all of True Value's specifications and descriptions and will be of good material and workmanship and free from any and all defects whatsoever. The Vendor further warrants that all products and services including any designs, labels, packaging, photos, images or descriptions, do not infringe any actual or alleged patent, trade name, service mark, copyright or trade secret and that the products, services as well as the prices charged comply with all applicable federal, state and local laws, rules and regulations, including California Prop 65. Approval by True Value of Vendor's designs, materials or packaging shall not relieve Vendor from any obligations under these warranties. The Vendor further warrants that each of the products and services shipped or provided to True Value, its Member stores wholesale ad other customers will be fit for sale, properly registered with the appropriate government agencies, and free from any restrictions and carrying all applicable warnings. Vendor further agrees that if Vendor's products or services become subject to restriction, Vendor will: 1) take all necessary steps to ensure that True Value's purchasing database timely and adequately reflects the restriction; and 2) place order restrictions into True Value's purchasing database to ensure that no restricted product is ordered or shipped in violation of the restriction.

**INDEMNIFICATION** – The Vendor agrees to defend, protect, indemnify and hold harmless True Value, its officers, directors, shareholders, employees, Members, wholesale customers, successors and assigns (each an "Indemnified Party") from and against any and all loss, liability, damages, costs, attorneys' fees or other expenses of any kind, on account of any and all claims, suits, judgments and costs ("Claims") arising out of any actual or alleged: (i) bodily injury or death to any person; (ii) loss, damage or destruction of property; (iii) defects in the products or services; (iv) claims that a product or the sale of that product violated any local, state or federal law or regulation; (v) breach by the Vendor of this Agreement; (vi) negligence, willful misconduct or strict liability of Vendor; and/or (vii) claims for infringement of any third party patent, trademark, trade name, service mark, trade secret or copyright. In the event of a Claim, True Value agrees to give Vendor prompt written notice. Vendor agrees to assume the defense of all Claims and will pay all attorneys' fees, costs, expenses, judgments and settlements. Vendor shall use counsel satisfactory to True Value in the defense of Claims. This Indemnification obligation is in addition to Vendor's agreement to procure insurance.

**RECALLS** – In the event that any product or service shipped or provided to True Value, its Member stores, wholesale customers and other customers becomes subject to a product restriction, corrective action plan, consent agreement or order requiring recall, repair, replacement, or the refund of purchase price ("Recall"), whether at the wholesale, retail or consumer distribution level and whether such Recall is voluntary (by the Vendor or True Value) or is a mandate of a government agency including but not limited to the Consumer Product Safety Commission, Food and Drug Administration, Department of Transportation, Department of Health and Human Services and/or all other federal, state, county, municipal and township governmental agencies which now have or in the future may acquire authority to issue such mandates, the Vendor agrees to defend, indemnify and hold harmless the Indemnified Parties from any and all expenses and liabilities including legal and administrative expenses as well as internal merchandising or logistical expenses incurred in response to such Recalls.

**INSURANCE** – The Vendor shall obtain and maintain in effect at all times Commercial General Liability Insurance including insurance for product liability and all other insurance as applicable to accidents or occurrences resulting in whole or in part from the provision of, use, storage or condition of the Vendor's products or services, either by means of (i) naming True Value Company, L.L.C., its Subsidiaries and its Member, wholesale customers and Affiliate Retailers as



additional insureds on the Vendor's Commercial General Liability Policy or (ii) obtaining a Broad Form Vendor's Endorsement with True Value, its Subsidiaries and its Member, wholesale customers and Affiliate Retailers named as additional insureds on the Vendor's Broad Form. Any such insurance required to be provided hereunder shall be primary insurance and non-contributory for True Value and its Subsidiaries and its Members, wholesale customers and Affiliate Retailers. Any similar insurance maintained by True Value or its Subsidiaries and its Member and Affiliate Retailers shall be excess and non-contributory with the insurance required to be provided by the Vendor as set forth above. The insurance required to be provided by the Vendor above must be evidenced by a certificate of insurance written by an admitted United States carrier with an A.M. Best Rating of A- or better and a financial size rating of Class VIII or higher. The insurance coverage required above must have minimum limits of \$1 million dollars per occurrence and \$1 million Products-Completed Operations. The policy must be issued on an occurrence basis and have thirty (30) days written notice to True Value in the event of cancellation or material change in coverage.

NON-DISCRIMINATION AND AFFIRMATIVE ACTION - From time to time, True Value may be a federal government subcontractor. As a True Value vendor, you may also be considered a federal subcontractor and may be required to comply with the following Equal Opportunity clauses, unless exempt: 41 CFR Section 60-1.4(a), 41 CFR Section 60-250.5(a), 41 CFR Section 60-300.5(a), and 41 CFR Section 60-741.5(a). The following provisions may also apply, unless exempt: 41 CFR Section 61-250.10 and 41 CFR Section 61-300.10 (both of which relate to veterans employment reports) and 29 CFR Part 471, Appendix A to Subpart A (posting of employee notice). To the extent a federal subcontracting relationship exists, these laws are incorporated by reference as terms and conditions of this Agreement.

GENERAL – The Vendor agrees that it will not use or disclose any True Value confidential or proprietary information except as necessary in the performance of this Agreement or as required by law. No waiver by True Value of any provisions hereof shall constitute a waiver of any other breach of such provision. This Agreement shall be enforced and interpreted in accordance with the laws of the State of Illinois without regard to choice of law rules and any proceeding arising out of this Agreement shall be heard in and Vendor consents to the exclusive jurisdiction in the state or federal courts located in Chicago, Illinois. This Agreement, including all attachments, may not be amended, modified or changed by Vendor without the written agreement of True Value. This Agreement, including all attachments, as well as the True Value Vendor Policies and Procedures which are incorporated herein, constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes all prior or contemporaneous agreements, written or verbal, concerning same. If any provision of this Agreement is invalid or unenforceable, the provision is deemed omitted and the remaining provisions shall not be affected in any way. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. The individual signing this Agreement warrants and represents that they are a duly authorized representative of Vendor with the requisite authority to bind Vendor to the terms and conditions set forth herein. These terms and conditions without modification shall become effective immediately upon Vendor submission. The terms related to Purchasing Information and Defective Allowance shall become effective upon approval by True Value on the date set forth below.

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This Agreement will remain in effect until terminated by either Party upon ninety days prior written notice.

Vendor: \_\_\_\_\_

**True Value Company, L.L.C.**

Authorized by: \_\_\_\_\_

Signature \_\_\_\_\_

Title: \_\_\_\_\_

**Product Merchant**

Date: \_\_\_\_\_

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