



RURAL KING DISTRIBUTION

Purchase Order Terms and Conditions

* All References to Vendor Compliance Agreement refer to Rural King Vendor Compliance Agreement that can be found at www.Ruralking.com/Vendors

** All References to an addendum can be found under documents section at www.Ruralking.com/vendors

*** All references to a specific time refer to the legal time zone being used by the State of Illinois, currently Central Time (CT).

1. **Applicability**

This purchase order is an offer by **RKDS, LLC**, d/b/a Rural King Distribution, ("**RK**") for the purchase of the goods specified on the face of this purchase order (the "**Goods**") from the party to whom the purchase order is addressed (the "**Vendor**") in accordance with, and subject to, these terms and conditions (the "**Terms**"; together with the terms and conditions on the face of the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Vendor's acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Vendor's general terms and conditions of sale or any other document issued by Vendor in connection with this Order.

These Terms apply to any repaired or replacement Goods provided by Vendor hereunder.

RK is not obligated to any minimum purchase or future purchase obligations under this Order.

2. **Acceptance**

Orders will be generated and transmitted to Vendor via EDI or email. EDI electronic confirmation is required within 12 hours after submission by RK. Email confirmation is required within 24 hours after submission by RK. Category Manager may withdraw the Order at any time before it is accepted by Vendor. EDI is preferred choice.

3. **Delivery Date**

Orders will be generated with a Requested Ship Date and a cancel date. Vendor shall ship the Goods in the quantities ordered within the ship and cancel dates specified in this Order or as otherwise agreed in writing by the parties, to insure delivery by the specified delivery date (the "**Delivery Date**"). If Vendor cannot ship the Goods to arrive in the specified delivery window, Vendor must notify RK in writing and receive written authorization to ship past the Order cancel date. Timely delivery of the Goods is of the essence. If Vendor fails to ship Goods within the agreed shipping window or fails to deliver the Goods or cause the Goods to be delivered to RK in full on the Delivery Date, RK may terminate the Order immediately by providing written notice to Vendor, and Vendor shall indemnify RK against any losses, claims, damages, and reasonable costs and expenses directly attributable to Vendor's failure to deliver the Goods on the Delivery Date. RK has the right to refuse or to reject Orders that ship prior to or after the designated shipping window, and RK has the right to return any Goods delivered prior to or after the agreed Delivery Date at Vendor's expense, and Vendor shall redeliver such Goods on the Delivery Date.

4. **Hazardous Materials**

Prior to delivery, Vendor shall provide RK with all known Hazardous Materials information about Goods being sold. The Vendor Compliance Agreement section titled "Hazardous Material" outlines the responsibilities of Vendor to provide RK Hazardous Materials information.

5. **Quantity**

If Vendor delivers more than the quantity of Goods ordered, RK may reject the entire Order or any excess Goods. Any such rejected Goods shall be returned to Vendor at Vendor's risk and expense including RK labor expense to process. If Vendor delivers less than the quantity of Goods ordered, RK may reject the entire Order. If Order is accepted, the shorted quantity will be cancelled. If RK 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 on a pro-rata basis. RK reserves the right to charge a storage fee for any rejected Goods until Vendor has them returned. See **RK Rates and Fees** addendum in for current storage fee, labor fee, freight fee. If the storage fees accumulate to value of excess Goods, RK will take possession of Goods and no longer charge a fee.

6. **Scheduling and Delivery Location**

All Goods shall be delivered to a specified delivery location ("**Delivery Location**") according to the Vendor Compliance Agreement and shall follow applicable instructions for scheduling. A Delivery Location is the agreed location where Vendor transfers Goods to RK, including but not limited to, RK distribution center, RK store, or location where RK picks up Goods from Vendor. RK reserves the right to change the Delivery Location at the time of scheduling. In the event the Goods are not delivered to the Delivery Location at the agreed delivery time ("**Delivery Time**"), and the agreed Delivery Time is not modified by RK, RK may, in RK's sole discretion, reject the Goods and such rejected Goods shall be returned to Vendor at Vendor's risk and expense.

7. **Shipping Terms**

Delivery shall be made to the Delivery Location, in accordance with the terms on the face of this Order. Vendor shall provide RK all shipping documents, including the BOL and packing list, at the time of delivery. The RK Order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to the Order. Please refer to Article 3 & 4 of the Vendor Compliance Agreement for the complete shipping guidelines.

8. **Title and Risk of Loss**

Title passes to RK upon delivery of the Goods to the Delivery Location. Vendor bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location. RK reserves the right to make claims after the Goods are checked in and assessed for count discrepancies and/or damage to Goods.

9. **Packaging**

All goods shall be packed for shipment according to Article 4 of the Vendor Compliance Agreement requirements. Vendor cannot require RK to return any packaging material. Any return of such packaging material shall be made at Vendor's expense.

10. **Amendment and Modification**

No change to this Order is binding upon RK unless it is in writing, specifically states that it amends this Order, and is signed by an authorized representative of RK.

11. **Inspection and Rejection of Nonconforming Good**

RK has the right to inspect the Goods on or after the Delivery Date. RK, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines

the Goods are nonconforming or defective. RK does not accept substitution of Goods. If RK rejects any portion of the Goods for any of the foregoing reasons, RK has the right, effective upon written notice to Vendor, to: (a) rescind the Order in its entirety; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If RK requires replacement of the nonconforming, defective or substituted Goods, Vendor shall, at its expense, replace such Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the rejected Goods and the delivery of replacement Goods. If Vendor fails to timely deliver replacement Goods, RK may replace them with goods from a third party and charge Vendor the cost thereof and terminate the Order for cause pursuant to **Section 20**. Any inspection or other action by RK under this Section shall not reduce or otherwise affect Vendor's obligations under the Order, and RK shall have the right to conduct further inspections after Vendor has carried out its remedial actions.

12. Price

The price of the Goods is the price stated in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, 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 RK.

13. Payment Terms

Vendor shall issue an invoice to RK upon shipment of the Goods. RK will pay all properly invoiced amounts due to Vendor in accordance with the terms of this Order, except for any amounts disputed by RK in good faith. All payments hereunder will be in US Dollars and shall be paid in the form of a check issued by RK. In the event of a payment dispute, RK shall deliver a "Rural King Invoice Refusal Form" to Vendor prior to the due date, listing all disputed items and providing a reasonably detailed description of each disputed item. The parties shall seek to resolve all such disputes expeditiously and in good faith. Vendor shall continue performing its obligations under the Order notwithstanding any such dispute. EDI is preferred choice for invoices. Please see Article 2 of the Vendor Compliance Agreement for invoice instructions.

14. Set-off

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

15. Defectives

Vendor is subject to the requirements outlined in the "Customer Returns and Defective Goods Policy".

16. General Indemnification

Vendor shall defend, indemnify, and hold harmless RK and RK's affiliates, successors or assigns and their respective directors, officers, shareholders, members and employees, and RK's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "**Losses**") arising out of or occurring in connection with the products purchased from Vendor or Vendor's breach of the Terms, Vendor's failure to provide Instructions, or the negligence or willful misconduct of Vendor or any agent of Vendor. Vendor shall not enter into any settlement without RK's or Indemnitee's prior written consent.

17. Intellectual Property Indemnification

Vendor shall, at its expense, defend (with counsel acceptable to RK), indemnify and hold harmless RK and any Indemnitee against any and all Losses arising out of or in connection with any claim that RK's or Indemnitee's use or possession of the Goods infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Vendor enter into any settlement without RK's or Indemnitee's prior written consent.

18. Insurance

Vendor 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 product liability) in a sum no less than \$2,000,000.00 per occurrence; \$10,000,000 per occurrence if determined by RK that Vendor is a high-risk vendor. Vendor shall provide RK with a certificate of insurance from Vendor's insurer evidencing the insurance coverage specified, and the certificate of insurance shall name RK as an additional insured. Insurance shall be with financially sound and reputable insurer located in the United States. Insurance must be written with a carrier with an A.M. Best Key Rating of at least A-. Vendor shall provide RK not less than thirty (30) days' advance written notice in the event of a cancellation or material change in Vendor's insurance policy. Except where prohibited by law, Vendor shall require its insurer to waive all rights of subrogation against RK's insurers and RK or the Indemnites. Provide documentation by emailing vendorcompliance@ruralking.com.

19. Compliance with Law

Vendor is in compliance with and shall produce and provide the Goods to comply with, all applicable laws, regulations, and ordinances. Vendor has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order and to place the Goods into commerce. Vendor is responsible for giving notice to RK of changes in the law affecting Goods within thirty (30) days of Vendor becoming aware of the change.

20. Termination

In addition to any remedies that may be provided under these Terms, RK may terminate this Order with immediate effect upon written notice to the Vendor, either before or after the acceptance of the Goods, if Vendor has not performed or complied with any of these Terms, in whole or in part. If the Vendor becomes insolvent, 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 RK may terminate this Order upon written notice to Vendor. If RK terminates the Order for any reason, Vendor's sole and exclusive remedy is payment for the Goods received and accepted by RK prior to the termination.

21. Limitation of Liability

Nothing in this Order shall exclude or limit (a) Vendor's liability under Sections 15, 16, 17 and 23 hereof, or (b) Vendor's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

22. Waiver

No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order 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.

23. **Confidential Information**

All non-public, confidential or proprietary information of RK, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by RK to Vendor, 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 the Order is confidential ("**Confidential Information**"), solely for the use of performing the Order, and shall not be disclosed or copied unless authorized by RK in writing. Upon RK's request, Vendor shall promptly return all documents and other materials received from RK. RK 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 Vendor at the time of disclosure; or (c) rightfully obtained by the Vendor on a non-confidential basis from a third party.

24. **Force Majeure**

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). *Force Majeure* Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. Vendor's economic hardship or changes in market conditions are not considered *Force Majeure* Events. Vendor shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Vendor from carrying out its obligations under the Order for a continuous period of more than thirty (30) days, RK may terminate this Order immediately by giving written notice to Vendor.

25. **Assignment**

Vendor shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior written consent of RK. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Vendor of any of its obligations hereunder.

26. **Relationship of the Parties**

The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, 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 or exclusive dealing shall be construed from this Order.

27. **No Third-Party Beneficiaries**

This Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

28. **Governing Law**

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois.

29. **Submission to Jurisdiction**

Any legal suit, action or proceeding arising out of or relating to this Order shall be instituted in the following courts 1) a state or federal court located in Illinois or 2) a state or federal court located in state that a) Vendor is domiciled in *and* b) RK Holdings, LLP has a physical Rural King store in that state. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

30. **Cumulative Remedies**

The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

31. **Notices**

All notices, request, 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 on the face of this Order or to such other address that may be provided or designated by the receiving party in writing. All Notices shall be delivered by electronic mail (e-mail), addressed to vendorcompliance@ruralking.com.

32. **Severability**

If any term or provision of this Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision or invalidate or render unenforceable such term or provision in any other jurisdiction.

33. **Proposition 65 Compliance and Indemnification**

Vendor warrants that all Goods sold to RK will be compliant with California's Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, including having proper notice labeling required on products. Vendor shall defend, indemnify, and hold harmless RK from and against any third-party demands, claims, losses, damages, liabilities, obligations, for bodily injury (including death) or damage to property associated with Goods not being compliant with California's Proposition 65.

34. **Liquidating Damages**

If Vendor fails to comply with shipping schedules and fill rates outlined in Purchase Orders it shall be considered a material breach of this Agreement and shall result in liquidating damages, outlined as follows. In the event of a said material breach of this Agreement by Vendor, RK shall be entitled to receive the greater of 5% of the underlying invoice or \$500 as liquidated damages, in addition to any remedy outlined in Paragraph 11 above. The parties acknowledge that RK's actual damages in the event of said material breach by Vendor under this Agreement will be difficult to ascertain, and that such liquidated damages represent the parties' best estimate of such damages. If Vendor violates this provision three times, then RK may Cancel all orders and discontinue business with Vendor.

35. **Non -solicitation and Engagement of RK Employees**

Vendor acknowledges that in the course its business relationship with RK, it will work and have contact with certain employees of RK who are responsible for establishing, maintaining, and managing that relationship with the Vendor ("RK Contact Employees"). Vendor further acknowledges that RK devotes significant time and expense to the training and development of its employees, including RK Contact Employees, and that RK Contact Employees will generate and/or have access to Confidential Information and knowledge specific to the business relationship between Vendor and RK. Vendor therefore agrees that without the written consent of the RK, which may be withheld by RK in its sole discretion, neither Vendor nor any affiliate of Vendor will solicit, hire, employ, or engage as an independent contractor any RK Contact Employee(s) while any such person is employed by RK and for a period of two years after any such person ceases to be an

employee of RK. RK shall be entitled to injunctive relief for any violation of this Section, together with reasonable attorney fees it incurs enforcing this section, wither or not an action is filed.

I have read, understand, and agree

Signature and Date

Company