

SUPPLIER TERMS AND CONDITIONS

This SUPPLIER TERMS AND CONDITIONS (the "Agreement") is by and between School Specialty, LLC, a Delaware limited liability company, doing business at W6316 Design Drive, Greenville, WI 54942 ("School Specialty") and the Supplier ("SUPPLIER") indicated in the executed Supplier Program (the "Supplier Program") that references this Agreement. For purposes herein, "School Specialty" shall include all affiliates, subsidiaries, and parent companies as may exist from time to time. This Agreement will supersede all other prior terms and conditions and shall remain in force until terminated pursuant to Section 2 below or is replaced by a subsequent agreement.

1. **Introduction.** The Supplier Program, and this Agreement, including all attachments, schedules, exhibits, is between School Specialty and SUPPLIER covers the sale by SUPPLIER and purchase by School Specialty of certain products ("Products").
2. **Term and Termination.**
 - a. **Term.** This Agreement is effective when a Supplier Program referencing this Agreement is executed by authorized signatories of both companies and shall remain effective until terminated or replaced by a subsequent agreement.
 - b. **Termination without cause.** Either party will have the right to terminate this Agreement at any time, without cause, on the delivery of one hundred twenty (120) days prior written notice.
 - c. **Termination with cause.** Without prejudice to either party's other rights or remedies, each party will have the right to terminate this Agreement upon written notice if the other party is in material breach of any material term, condition, warranty or covenant of this Agreement and the party fails to cure that breach within thirty (30) days after receipt of written notice of such breach.
 - d. **Consequences of termination.** Upon termination, SUPPLIER will be responsible to fill any orders on hand and School Specialty will be responsible to pay for orders not canceled and received by School Specialty. SUPPLIER shall return any and all School Specialty Existing Materials in accordance with Section 12 below.
3. **Warranty.**
 - a. SUPPLIER hereby expressly warrants to School Specialty that all of the Products to be provided by it pursuant to this Agreement:
 - (i) are merchantable and fit for their intended purposes;
 - (ii) are free from defects in design, materials or workmanship;
 - (iii) are duly marked with all necessary patent, trademark, copyright or other markings;
 - (iv) are duly marked with the proper country of origin with respect to Products wholly or partially made outside the United States or containing components wholly or partially made outside the United States;
 - (v) do not infringe any patent, trademark, copyright or other intellectual property right of any third party;
 - (vi) comply in all respects with all applicable laws, statutes, ordinances and regulations; including, but not limited to, the **Consumer Products Safety Improvement Act of 2008 (including requirements for all General Use, Children's Products, Toys and Child Care items), California Proposition 65, Coalition of Northeastern Governors, and the state of Illinois SB1943 The Lead Poisoning Prevention Act.** SUPPLIER will be required to furnish applicable General Conformity Certification (GCC) and test results upon request from School Specialty;
 - (vii) have not been manufactured using child (under 16 years of age) or prison labor;
 - (viii) are in compliance with all specifications and requirements specified by School Specialty;
 - (ix) conform to all samples, models or specimens of such Products provided to School Specialty;
 - (x) conform to SUPPLIER's specifications in SUPPLIER's written materials;
 - (xi) bear warnings, labels and markings required by all applicable laws, rules and regulations; and
 - (xii) are free from liens and encumbrances.
 - b. All written warranties provided by SUPPLIER with respect to consumer products shall comply with all applicable laws, rules and regulations, including without limitation, all labeling requirements and the Magnuson-Moss Warranty Federal Trade Commission Improvement Act.
 - c. SUPPLIER agrees School Specialty representatives including 3rd party authorized personnel may inspect any employment records and visit the manufacturing facilities involved if there is an appearance of breach of this warranty and School Specialty shall be immediately entitled, without right of recourse by SUPPLIER to cancel all pending purchase orders, and return any goods previously accepted for full refund plus expenses.
4. **Indemnity.** With respect to any and all of the Products covered by this Agreement, SUPPLIER agrees to defend, indemnify and hold harmless School Specialty (inclusive of School Specialty's subsidiaries and affiliates, their successors and assigns) at SUPPLIER's expense from and against any claim, charge, demand, proceeding, suit, liability, loss, cost, expense, order, decree, attorneys fees, court costs, trial or appeal and judgments including damages of any kind resulting from, arising out of or in connection with: (a) any actual or claimed personal injury (including death), property damage or loss of any nature whatsoever alleged to have occurred as a result of the use of any of the Products, (b) any defect in material, workmanship or design, (c) patent, trademark or copyright infringement (d) any false or deceptive advertising claims with respect to any of the goods, items or articles or any packaging or advertising associated therewith; (e) any negligent or wrongful act or omission committed by SUPPLIER, (f) any recall, made voluntarily by School Specialty or by the order/direction of any government entity, of all or any portion of the Products covered by this Agreement, including any and all costs associated with such recall (including but not limited to, costs of return shipping for School Specialty, or its customers, costs of repairing, refunding or replacing items, and costs associated with noticing customers), or (g) breach of any representations, warranties or covenants in this Agreement, including without limitation the warranties set forth in Section 3 or 11 herein. School Specialty shall have the right to participate and be represented in any such action, suit or proceeding by its own attorneys at its own expense.
5. **Limitation of Liability.** IN NO EVENT SHALL SCHOOL SPECIALTY BE LIABLE TO SUPPLIER FOR CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF USE OR

PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, EXPRESS OR IMPLIED WARRANTY OR ANY OTHER LEGAL THEORY PERMITTED UNDER APPLICABLE LAW, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. **Insurance.** During the term of this Agreement, SUPPLIER is required to carry liability insurance with coverage acceptable to School Specialty and with U.S. based carrier(s) acceptable to School Specialty. School Specialty shall have the right to review and approve SUPPLIER's liability insurance policy. SUPPLIER shall include School Specialty as a named additional insured under SUPPLIER's liability insurance policy and provide evidence thereof. No such insurance policy shall be cancelable or materially modified without School Specialty receiving at least thirty (30) days prior written notice. In the event an insurance policy of supplier is so cancelled or materially modified SUPPLIER shall provide School Specialty with written notice at least 30 days in advance of such cancellation or modifications. SUPPLIER shall provide School Specialty a copy of SUPPLIER's certificate of insurance prior to the Effective Date and shall provide proof of its compliance with this Section 6 upon School Specialty's reasonable request. The Certificate of Insurance shall include the following:
- a. Commercial General Liability including **Product Liability/Completed Operations Hazard and Umbrella Liability** which in combination provide not less than **\$2 million per occurrence in Product Liability limits and not less than \$5 million in total aggregate limits.**
 - b. Broad form Vendors endorsement naming School Specialty, its subsidiaries and affiliates as an additional insured.

7. **Delivery and Acceptance.**

- a. Time of delivery and quantities ordered are of the essence. School Specialty reserves the right to reject goods and to cancel all or any portion of any order in the event of failure to deliver in accordance with School Specialty's specifications and to accept or reject any incomplete or otherwise non-conforming shipment. Approval of any samples by School Specialty shall not excuse SUPPLIER from exact compliance with specifications. Acceptance of any part of a shipment shall not bind School Specialty to accept the remainder of that shipment or any future shipments or constitute a waiver of School Specialty's right to revoke acceptance of goods and/or to return any goods accepted. Goods shipped after the time specified and goods delivered in excess of the quantity ordered may be returned at any time at SUPPLIER's expense, and retention of such goods shall not be considered an acceptance of the same unless there has been an unreasonable delay in their return. No over-shipments will be accepted against any order without written approval of School Specialty. SUPPLIER's providing a defective allowance in the Supplier Program agree that such allowance applies specifically to customer returns, and does not, and is not intended to cover the rejection and cancellation terms contemplated by this Section 7.
- b. Products must be shipped by the particular route, method and carrier stated in this Agreement unless otherwise agreed. **Risk of loss prior to actual receipt and acceptance of Products by School Specialty shall be upon SUPPLIER, notwithstanding any agreement with respect to the payment of transportation charges.**
- c. Defects in the goods, apparent or hidden, and breach of implied or express warranties are not waived by School Specialty's acceptance of all or any part of the Products. School Specialty retains the right to cancel any portion of a remaining order, to return any portion of goods delivered and accepted in addition to all of School Specialty's other remedies provided by law. In particular, SUPPLIER agrees to be responsible for all outbound transportation costs associated with such returns ("RTVs"). Should SUPPLIER and School Specialty negotiate a different freight arrangement, the parties shall jointly execute a written confirmation explaining the revised policy.
- d. Each shipment and each order shall be separately billed and shall include a packing slip listing all part numbers and quantities of goods shipped. Each package, packing slip and tag covered by a particular order shall bear that purchase Order number. All items shipped at the same time shall be covered by a single bill of lading. SUPPLIER must remit invoices within three (3) days to School Specialty on all direct ship items.
- e. School Specialty shall not be charged for packaging, boxing, crating, or cartage. SUPPLIER shall promptly refund the full amount of any deposits made by School Specialty on SUPPLIER's drums, pallets, boxes, reels, and other special containers immediately upon return of such items to SUPPLIER.
- f. SUPPLIER agrees to notify School Specialty at least (60) days in advance of any package changes, additions or changes in UPC, bar codes or associated container quantities, including but not limited to pack size, master pack, bar code, package dimensions, and product description.
- g. All merchandise must be duly marked with all necessary patent, trademark, and copyright notices. All merchandise must bear warnings, labels and markings required by all applicable laws, rules and regulations.
- h. All merchandise must comply with all applicable product safety regulations, including CPSC mandated Federal regulations.

8. **Costs.**

- a. School Specialty markets SUPPLIER'S items in an annual print catalog. SUPPLIER agrees to maintain its prices to School Specialty for a minimum of one year. Even after one year from the date of this Agreement, SUPPLIER agrees to give at least one hundred twenty (120) days written notice of any cost increases with detailed explanation of the reason for cost increases, and the effective date. SUPPLIER agrees to obtain written approval from the appropriate Merchandise Manager before affecting any price increase. SUPPLIER agrees and understands that price changes conveyed through general price lists or data clean-up will not be accepted. SUPPLIER agrees that invoice prices will match PO prices for every item.
- b. If any goods furnished under this order are composed of more than one part, SUPPLIER shall furnish School Specialty such quantities of component parts as SUPPLIER shall order at reasonable costs proportionate to the prices specified for the complete assembly. School Specialty's right to order additional component parts hereunder shall survive completion of this order.

- c. In the event cost is not specified on this order, the order is not to be filled at costs higher than the last previously quoted or charged cost without School Specialty's written consent. If SUPPLIER establishes lower costs on goods prior to shipment, School Specialty shall benefit from same when invoice is rendered. If SUPPLIER is required by law or regulation to reduce the costs specified on this order, SUPPLIER shall adjust its billings accordingly and refund any excess payments.
- d. To the extent permitted by law, School Specialty shall be relieved of any obligation to reimburse SUPPLIER for any sales or use taxes in connection with this transaction unless the amount of such taxes are itemized separately on SUPPLIER's original invoice.
- e. SUPPLIER shall guarantee its costs against manufacturers or SUPPLIER's own cost declines, including a protection of School Specialty's owned inventories, by credit memo. In the event that prior to the final shipment under any order, SUPPLIER sells or offers to others goods substantially of the same kind as ordered at lower costs and or on terms more favorable to a third party than those offered to School Specialty, the costs and or terms shall be deemed automatically revised to equal the lowest costs and most favorable terms at which SUPPLIER shall have sold or shall have offered such goods and payment shall be made accordingly. In the event School Specialty shall become entitled to such lower costs but shall have made payment at any costs in excess thereof, SUPPLIER will promptly refund the difference in price to School Specialty. The costs to School Specialty include all taxes whether or not set forth separately. If any manufacturer's excise or other similar or different taxes are paid on the goods and if such tax, or any part thereof, is refunded to SUPPLIER, then SUPPLIER shall immediately pay School Specialty the amount of such refund. In the event that a court or regulatory agency or body finds that the costs on an order are in excess of that allowed by any law or regulation of any governmental agency, the costs shall be automatically revised to equal a cost which is not in violation of said law or regulations. If School Specialty shall have made payment before it is determined that there has been a violation, SUPPLIER shall promptly refund an amount of money equal to the difference between the cost paid for the goods and that cost which is not in violation of said regulations.

9. **Statutory Compliance.** SUPPLIER agrees and certifies that unless specifically exempted by law, it:

- a. Complies with the requirements of Executive Order 11246 as amended by Executive Order 11375, 41 C.F.R. 60-1.4, and agrees that the Equal Opportunity Clause (non-discrimination based on race, color, religion, sex, or national origin) and other applicable contractual clauses of this regulation are incorporated in and made a part of all contracts or purchase orders awarded to SUPPLIER.
- b. Complies with the requirements of Section 503 of the Rehabilitation Act of 1973 and 41 C.F.R. 60-741.5 and agrees that the Equal Opportunity Clause for Workers with Disabilities and other applicable contractual clauses of this regulation are incorporated in and made a part of all contracts or purchase orders awarded to SUPPLIER.
- c. Complies with the requirements of Section 402 of the Vietnam Era Veterans Readjustment Act of 1974 and 41 C.F.R. 60-250.4 and agrees that the Affirmative Action Clause for Disabled Veterans and Veterans of the Vietnam Era and other applicable clauses of this regulation are incorporated in and made a part of all contracts or purchase orders awarded to SUPPLIER.

10. **Safety Data Sheets.**

- a. For Products that the Hazard Communication Standard and/or the Globally Harmonized System of Classification and Labeling of Chemicals requires the issuance of a Safety Data Sheet ("SDS") it is the responsibility of the manufacturer, supplier, or importer to provide the proper SDS at the time of the first shipment to School Specialty. In addition, the manufacturer, supplier, or importer shall provide updated SDS information within 24 hours of any formulation change to the product, or if the current SDS is found to contain inaccurate information. In addition to SDS, the manufacturer, supplier, or importer is responsible for providing to School Specialty such hazardous material information as is required by Title 49 Code of Federal Regulations (CFR) Parts 100 through 185. School Specialty can only ship products with a hazard classification more restrictive than "ORMD" from our Mansfield, OH distribution center. **Therefore, products with hazard classes other than "ORMD" must be disclosed to School Specialty.**
- b. The transportation information for each product falling within the terms of this Section 10 must be provided to School Specialty before any such products are placed in School Specialty inventory. This information must include the following:
 - (i) DOT proper shipping description, including technical names, if required for generic descriptions.
 - (ii) Specific packaging requirements, if necessary
 - (iii) DOT Exemptions if required (DOT-E Numbers)
- c. All information is subject to review and confirmation.

11. **Patent and Trademark Infringement.** In the event that SUPPLIER or School Specialty receives a communication asserting that any of the Products covered by this Agreement infringe one or more patents or trademarks, SUPPLIER agrees to provide to School Specialty a written non-infringement opinion from a qualified intellectual property attorney within four (4) weeks of receipt of such communication. In the event that SUPPLIER is unable to obtain a written non-infringement opinion as provided herein, SUPPLIER agrees to reimburse School Specialty for all expenses incurred in consulting with a qualified intellectual property attorney to determine whether a non-infringement opinion may be obtained, and to the extent possible, in obtaining a written non-infringement opinion for each said patent or trademark. In the event that School Specialty determines that SUPPLIER is providing Products under this Agreement which infringe one or more patents or trademarks of a third party, SUPPLIER shall indemnify School Specialty from any damages which School Specialty may suffer due to the infringement under the provisions of Section 4 above. Further SUPPLIER shall (a) use its best efforts to replace the Product with a non-infringing version of the Product which has been approved by School Specialty and without an increase in the price of the Product regardless of any additional costs of production or (b) procure for School Specialty a royalty free and perpetual license from the owner of the patents or trademarks which could be used for the production of the Products by the designee of School Specialty.

12. **Proprietary and Ownership Rights and Private Label Products.** As between School Specialty and SUPPLIER, School Specialty shall be the sole and exclusive owner of any and all materials that are (i) owned or licensed by School Specialty immediately prior to the Effective Date or (ii) developed or acquired by School Specialty separate from this Agreement or (iii) provided to SUPPLIER by School Specialty for the purpose of evaluating, creating or manufacturing the Products hereunder or (iv) created by SUPPLIER at School Specialty's expense and direction for the creation or manufacture of the Products hereunder ("School Specialty Existing Materials"). SUPPLIER agrees to cooperate with School Specialty to protect and preserve School Specialty's patent and other rights in the School Specialty Existing Materials and further agrees to

execute and deliver to School Specialty or its legal representative any and all papers, documents or instruments that might be necessary to protect, preserve or perfect School Specialty's ownership of, and rights in the School Specialty Existing Materials, including, but not limited to, further assignments of rights for the purpose of obtaining patents or other intellectual property protection for the School Specialty Existing Materials throughout the world.

- a. During the Term School Specialty grants to SUPPLIER a limited, nonexclusive, non-transferable right to use School Specialty Existing Materials solely to perform the terms and conditions of this Agreement.
- b. SUPPLIER acknowledges and agrees that title in the School Specialty Existing Materials will at all times remain with School Specialty. SUPPLIER agrees not to assert against any of the School Specialty Existing Materials any statutory or possessory liens, claims or other rights that may be available to SUPPLIER, all of which SUPPLIER hereby waives.
- c. Upon termination of this Agreement by any reason, SUPPLIER shall within fifteen (15) business days deliver to School Specialty all School Specialty Existing Materials and all copies thereof in the format and medium provided to SUPPLIER by School Specialty and/or used by SUPPLIER in connection with this Agreement.
- d. SUPPLIER agrees that a breach by SUPPLIER of the obligations contained in this Section 12 may cause School Specialty severe business damage and irreparable harm for which there may be no adequate remedy at law and SUPPLIER hereby consents to the issuance, by any court of appropriate and competent jurisdiction, of any injunction in favor of School Specialty, enjoining the breach of this Section 12. To the extent permitted under applicable law, SUPPLIER waives the posting of bond in connection with any such injunction. The remedies contained herein are in addition to and not in lieu of any other remedies available at law or in equity.

13. Confidentiality. In the performance of or otherwise in connection with this Agreement, one party ("Discloser") may disclose to the other party ("Recipient") certain confidential information ("Confidential Information"). The Recipient will treat such Confidential Information as confidential and proprietary of the Discloser and during and after the term will: (a) use the Confidential Information of the Discloser solely for the purposes set forth in this Agreement; (b) take suitable precautions and measures to maintain the confidentiality of the Confidential Information of the Discloser; and (c) not disclose or otherwise furnish the Confidential Information of the Discloser to any third party other than employees or independent contractors of the Recipient who have a need to know the Confidential Information to perform its obligations under this Agreement, provided such employees or independent contractors are obligated to maintain the confidentiality of the Confidential Information.

14. Code of Conduct. This SUPPLIER Code of Conduct (the "Code of Conduct") applies to all suppliers that produce goods or services for School Specialty, or any of its subsidiaries, affiliates, divisions or agents. Although suppliers to School Specialty are from many different countries, nationalities and cultures, the SUPPLIER Code of Conduct represents School Specialty's commitment to source goods and services only from persons and firms that achieve internationally recognized standards and practices in dealing with their workers and their working environment.

All SUPPLIERS to School Specialty currently meet and will continue to meet, so long as they act as a SUPPLIER to School Specialty, each of the following standards:

1. **Prohibition of Forced Labor.** No prison, indentured or forced labor of any kind is used by the SUPPLIER. Foreign workers hired by the SUPPLIER are not required to remain in employment at any time against their will.
2. **Prohibition of Child Labor.** No person below the age of 16 is employed by the SUPPLIER. If the local legal minimum age for work is higher than 16, the SUPPLIER employs no one younger than the legal minimum age.
3. **Compliance with Local Law.** The SUPPLIER will comply with all laws and regulations to which it is subject, including those applicable to the environment.
4. **Working Hours.** The SUPPLIER will insure that employee working hours are in compliance with local law, but in no event shall an employee be required to work more than forty eight (48) hours per week, or more than six (6) days during any seven (7) day period. All employees of the SUPPLIER shall be free to refuse to work any requested overtime without threat of termination, punishment or penalty.
5. **Wages and Benefits.** All employees of the SUPPLIER shall receive the greater of the legal minimum wage and benefits or the prevailing wage and benefits in the industry, with a written accounting given to the Employee during each pay period clearly indicating the employee's compensation and indicating any deductions from the employee's pay. SUPPLIER agrees to pay higher hourly rates for late shifts than for normal shifts. The SUPPLIER may not deduct penalties for disciplinary infractions from employee wages.
6. **Non-Discrimination.** The SUPPLIER will make hiring decisions solely on the basis of the employee's qualifications to perform the specific job. The SUPPLIER must not make any decisions relating to hiring, salary, benefits, advancement, discipline, termination or advancement on the basis of the employee or potential employee's race, color, gender, nationality, religion, age, maternity, or marital status.
7. **Working Environment.** The SUPPLIER must maintain a working environment in its facilities which is safe and healthy, and at all times in full compliance with all applicable laws and regulations relating to working conditions.
8. **Compliance with Applicable U.S. Laws.** The SUPPLIER will comply with all laws and regulations of the United States of America which may be applicable to its relationship with School Specialty including, without limiting the generality of the foregoing, the provisions of the Foreign Corrupt Practices Act and all applicable export control legislation.
9. **Inspection Right.** The SUPPLIER shall maintain reasonable records and documentation of its compliance with this Code of Conduct, and shall permit representatives of School Specialty to inspect (with or without notice) all such records and documentation, and the facilities of the SUPPLIER, to independently confirm compliance with this Code of Conduct. SUPPLIER agrees to post a copy of a notice of this policy in at least two prominent positions where it is likely to be read by the employees. This notice must be in English as well as in the local language spoken by a majority of SUPPLIER's employees.
10. **Breach.** If there is an appearance of breach of this Code of Conduct, School Specialty shall be immediately entitled, without right of recourse by SUPPLIER, to cancel all pending purchase orders, and return any goods previously accepted for full refund plus expenses. The remedies contained herein are in addition to and not in lieu of any other remedies available at law or in equity, including, without limitation of this or any other provision of this Agreement.

15. **Miscellaneous.**

- a. **Territory.** Except where indicated by SUPPLIER upon reasonable prior written notice, the SUPPLIER grants School Specialty the right to sell the products in all states within the United States and all countries (the "Territory"). Any special terms and conditions that SUPPLIER is granting to School Specialty, including, but not limited to, any part of the Territory that may be exclusive and/or any special pricing arrangements, should be set forth within an addendum.
- b. **Employees.** During the term of this Agreement and for a period of one (1) year after termination SUPPLIER and School Specialty agree that they will not solicit for employment, hire, or contract for services any then current employees who had a direct working relationship with the other without the prior written consent of the other, provided such restriction is available the applicable jurisdiction.
- c. **Former School Specialty Employees.** The Parties acknowledge that School Specialty will invest significant time, effort and funds in training its employees to the support the obligations School Specialty undertakes under this Agreement. During the term of this Agreement and for a period of one (1) year after termination SUPPLIER agrees that it will not provide pricing, terms or conditions to employees of School Specialty whose employment is severed from School Specialty, or to subsequent employers of said employee, which are direct competitors of School Specialty, unless the supplier was doing business with the subsequent employer prior to said employee leaving the employment of School Specialty.
- d. **Project Registration.** School Specialty requires protection by any supplier it engages for a bid project via Project Registration. That is, if School Specialty is offering to bid your product for a project prior to the bid being made public, then School Specialty shall be registered as the "dealer of record" by your company for your products and will be the sole supplier from conception to completion for said project. Please attach your standard Project Registration form to this agreement.
- e. **Choice of Law.** This Agreement, its interpretation, performance or any breach thereof, shall be construed in accordance with, and all questions with respect thereto shall be determined by the laws of the State of Wisconsin.
- f. **Amendments and Waiver.** No amendment to any provision of this Agreement shall be effective unless in writing and signed by both parties. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.
- g. **Notices.** All notice required to be given under this Agreement must be given in writing and delivered either in hand, by certified mail, return receipt requested, postage pre-paid, or by recognized overnight delivery service, all delivery charges pre-paid, and sent to the addresses set forth in the first page of this Agreement. Any notice to School Specialty shall also be sent to: School Specialty, LLC, W6316 Design Drive, Greenville, WI 54942, Attention: SVP Merchandising.
- h. **Assignment.** SUPPLIER may not assign this Agreement or any of its rights or delegate any of its duties under this Agreement without the prior written consent of School Specialty.
- i. **Force Majeure.** If performance hereunder is prevented, restricted or interfered with by any act or condition whatsoever beyond the reasonable control of a party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference. However, if either party is prevented due to such force majeure event from performing a material obligation under this Agreement for more than ninety (90) days, then the other party shall be entitled to terminate this Agreement.
- j. **Entire Agreement.** This Agreement, together with its related Supplier Program, and all exhibits, schedules and attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement, together with its related Supplier Program, supersedes, and the terms of this Agreement and its related Supplier Program, govern, any prior agreements with respect to the subject matter hereof.
- k. **Dispute Resolution.** Any claim, controversy or dispute relating to the Products, and/or relating in any way to the interpretation, breach, or enforcement of the terms of this Agreement and or the Supplier Program (a "Dispute") will be resolved as set forth in this Sub-Section 15(k). In the case of a Dispute, a party shall have thirty (30) days from the receipt of written notification of the Dispute to cure or remedy the Dispute. The parties agree to make good faith efforts at resolving any such Dispute. If a Dispute remains unresolved thirty (30) days from the receipt of written notification of a Dispute, the parties agree to submit the Dispute to mediation with JAMS by a neutral mediator then employed by JAMS and mutually agreed upon by the parties. The mediation will be attended by at least one officer, director or managing employee from each party with full authority to settle the Dispute at mediation. The parties agree to mediate the Dispute in good faith, to use their best efforts to resolve the dispute at mediation, and to split equally the cost of the mediator.
- Should the Dispute not be resolved despite the parties' best efforts during mediation, the parties may file a lawsuit to resolve the Dispute. The parties agree that such lawsuit must be venued exclusively in either a state or a Federal court located in Green Bay, Wisconsin. If the parties mutually agree, such dispute may alternatively be resolved in an arbitration proceeding using the rules of the American Arbitration Association ("AAA"), using a mutually agreed arbitrator of the parties' choosing and regardless of whether the arbitrator is employed by AAA.
- l. **Litigation and Waiver of Jury Trial.** In the event the parties are unable to mediate their dispute to satisfactory resolution, then any litigation between the parties shall be conducted in federal court in Outagamie County, if federal jurisdiction exists. If federal jurisdiction does not exist, then the matter may be litigated in state court in Outagamie County, Wisconsin. **IN ANY SUCH PROCEEDINGS, EACH OF THE PARTIES HEREBY KNOWINGLY AND WILLINGLY WAIVES AND SURRENDERS SUCH PARTY'S RIGHT TO TRIAL BY JURY AND AGREES THAT SUCH LITIGATION SHALL BE TRIED TO A JUDGE SITTING ALONE AS THE TRIER OF BOTH FACT AND LAW, IN A BENCH TRIAL, WITHOUT A JURY.**

- m. **Attorneys Fees.** In the event of any litigation between the parties hereto with respect to the Agreement, the prevailing party (the party entitled to recover costs of suit, at such time as all appeals have been exhausted or the time for taking such appeals has expired) shall be entitled to recover reasonable attorney's fees, including fees incurred at the appellate level, in addition to such other relief as the court may award.
- n. **Severability.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.
- o. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
- p. **Relationship of Parties.** Each party, in all matters relating to this Agreement, will act as an independent contractor. Neither party will have authority and will not represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other, or to represent the other as an agent, employee or in any other capacity. Neither execution nor performance of this Agreement shall be construed to have established any agency, joint venture or partnership. Neither party shall make any warranties or representations on behalf of the other party.
- q. **Conflicting Provisions.** In the event of a conflict between two or more provisions of this Agreement, the terms in the main body of this Agreement shall take precedence over any conflicting terms in any exhibit, schedule, attachment, and any SUPPLIER order confirmation or invoice. In the event of a conflict between the Agreement and the Supplier Program, the terms of this Agreement shall take precedence over the conflicting terms in the Supplier Program.
- r. **Survival.** Sections 3-5, 11, 12, 13 and 15 will survive the expiration or termination of this Agreement for any reason.
16. **Code of Ethical Behavior.** SUPPLIER agrees to comply with School Specialty's then current Code of Ethical Behavior as it pertains to Gifts and Entertainment and refrain from providing gifts or entertainment valued at more than one hundred dollars (\$100.00 USD) to School Specialty employees without prior approval of School Specialty's SVP of Merchandising.. SUPPLIERS found in violation are subject to termination. The Code of Ethical Behavior is available upon request.
17. **Social Accountability.** School Specialty has made value-based management the framework around which our global business strategy is constructed. In doing so, we have committed ourselves to uphold the highest ethical, social and environmental standards in the conduct of our supply chain. That means we will balance the needs and concerns of our stakeholders – those who impact, are impacted by, or have a legitimate interest in School Specialty's actions and performance. Accomplishing this requires a comprehensive set of policies and programs integrated throughout our business operations.
- All SUPPLIERS who supply private brand product to School Specialty will be required to:**
- Disclose all manufacturing locations where private brand product is produced.
 - For U.S. manufacturing locations, complete a Self-Assessment Survey. If a high-level of risk is indicated, submit to a third party factory assessment (see below for fees).
 - For non-U.S. manufacturing locations where private brand is produced, submit payment in advance to DCC, School Specialty's designated third party factory audit service provider, (or any other third party designated by School Specialty), for factory assessments (SUPPLIER pre-pay). Cost for the initial factory evaluation if \$1,250/factory, and \$1,050 for re-audit(s) as required.
16. **Quality Assurance and Product Testing.** We know that you share in the commitment of School Specialty to provide quality merchandise to our customers. School Specialty representatives including 3rd party authorized personnel may inspect any private brand products during the production stage and/or before making the final shipment to ensure that the product conforms to prescribed specifications and high quality standards. Non-conforming products may be stopped or asked to be reworked at any stage of manufacturing at the SUPPLIER's expense. SUPPLIER may need to send product samples to School Specialty's business location at the development, pre-production, and/or production stage to get an approval from School Specialty before proceeding to the next stage.
- All SUPPLIERS who supply PRIVATE BRAND product to School Specialty will be required to:**
- Submit samples of ALL private brand products to BVCPS for pre-production laboratory testing.
 - ALL testing expense is the responsibility of the SUPPLIER.
 - Testing fees vary and are dependent on the complexity of the product category.
 - All program details are found in the SUPPLIER Manual.
 - Based on successful passing of relevant tests, provide General Conformity Certificate for each shipment in accordance to the Consumer Product Safety Improvement Act of 2008 to our freight forwarder before the shipment is made.
18. **EPA and FDA product registry Information:** SUPPLIERS must provide document proof of EPA registry for anti-microbial claim and specific language for School Specialty's use in describing their product attributes in our published marketing (catalog, web, sales fliers). Failure to provide documentation of product claims can result in School Specialty suspending the marketing and sale of the specific items and a return of the specific product inventory to the supplier at the suppliers cost. The information required includes the full product name, the manufacture number, the specific language for marketing and the EPA or FDA registry number or certificate (as applicable).
19. **Equal Opportunity Employer:** Our organization (School Specialty) is an equal opportunity employer and federal contractor or subcontractor. As applicable, the parties agree that they shall abide by the requirements of 41 CFR Section 60-1.4(a); 41 CFR Section 60-300.5(a); 41 CFR Section 60-741.5(a); and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements, and that these requirements are incorporated herein. Section 60-300.5 and 60-741.5 require that covered prime contractors and subcontractors ensure nondiscrimination and take affirmative action in employment to employ and advance qualified individuals without regard to their physical or mental disability and protected Veteran status.