



SPECIAL INSTRUCTIONS:

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**BY ACCEPTING THIS ORDER SELLER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS APPEARING ON THIS PAGE AND ON THE REVERSE SIDE HEREOF.**

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BUYER

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SELLER

MAIL INVOICE TO: Kohl's Department Stores, Inc.  
P.O. Box 359  
Milwaukee, WI 53201

**PURCHASE ORDER – NONMERCHANDISE GOODS OR SERVICES  
TERMS AND CONDITIONS**

1. Seller shall be bound by this Order and its terms and conditions when it executes and returns the acknowledgment copy, when it delivers to Buyer any of the goods or performs any of the services ordered herein, or when Seller otherwise indicates its acceptance of this Order. This order expressly limits acceptance to the terms and conditions stated herein and any additional or different terms prepared by Seller in an invoice or otherwise are objected to and rejected. Seller agrees that all prior negotiations with regard to the merchandise and/or services ordered herein are merged herein and that this Order shall constitute the complete and exclusive contract between Buyer and Seller with respect to such merchandise and/or services. Any and all modifications to this Order must be in writing and signed by the Buyer.
2. If goods are not shipped and/or services are not performed in accordance with the dates specified, Buyer may, without any liability, cancel the Order by a written notice to the Seller. The time of delivery and performance is of the essence of this Order. If the goods and/or services are not shipped or performed exactly as specified in the Order, in addition to all other available remedies, Buyer may assess Seller a charge equal to five percent (5%) of the invoice as liquidated damages. Acceptance of any part of the Order shall not bind Buyer to accept future shipments or services, nor deprive Buyer of the right to return goods and/or services already accepted. Goods returned by Buyer will be returned at the Seller's risk and expense. Seller hereby waives any right to cure improper tender which might otherwise be available under law. In the event Seller fails to accept or facilitate Buyer's return of defective and/or damaged goods within a reasonable period of time after receiving Buyer's notice, then Buyer shall, in addition to all other rights and remedies set forth herein or available under law or equity, have the right to dispose of the defective and/or damaged goods as Buyer sees fit and Seller shall waive all rights to the defective and/or damaged goods thereafter.
3. Each shipment must be carefully packed and the packing slip must accompany each shipment showing this Order number, item numbers, and complete description of contents. Any damage or loss caused by Seller's failure to pack properly shall be paid by Seller. No separate charges for packing, drayage, or storage shall be made and Buyer is responsible for only the lowest rate of transportation on shipment unless otherwise specified herein. Separate Orders shall not be combined on one packing slip. The invoice shall be mailed separately from shipment to the address set forth on the bottom of the front of this Order. Invoices dated after the twenty-fourth of the month will be billed as of the first of the following month.
4. Buyer may cancel this Order in whole or in part in the event of any of the following, each of which it is agreed will substantially impair the value of the whole Order to Buyer: a) there is any breach of Seller's warranties hereunder, b) there is any delay in delivery or performance or departure from delivery and routing instructions, c) there is any variation from the quantities, assortment, prices, services or other terms and conditions specified in this Order, d) there is any breach of Seller's obligations hereunder, e) the goods or services become the subject of any claim by any third party, f) Seller becomes insolvent or makes an assignment for the benefit of creditors, or a receiver for Seller's assets or business is appointed, or g) fire, flood, earthquake, tempest, strikes, war, acts of God, civil commotion, or other causes beyond Buyer's reasonable control. In such event, Seller shall immediately stop all work and observe any instruction from Buyer as to work in process. Cancellation for any of the foregoing reasons shall constitute "for cause" and shall not subject Buyer to any liability, cost, or charge whatsoever. Buyer may also cancel this Order in whole or in part without cause at any time. In the event of such cancellation, Buyer's liability to Seller shall be limited to the contract price of that portion of this Order fully and properly performed prior to such cancellation plus the actual amount of Seller's costs reasonably incurred in contemplation of performance of the canceled portion less any amount saved by Seller as a result of such cancellation and less any amounts which could have reasonably been mitigated by Seller.
5. If, before the date of final delivery or final performance under this Order, Seller offers to sell or sells merchandise or services substantially similar to that ordered herein to another similarly situated purchaser at a lower price and/or on terms more favorable to such purchaser than are stated herein, the terms of this Order are hereby revised to equal the lowest price and/or most favorable terms at which Seller sells such merchandise or services, and payment hereunder shall be made accordingly.
6. Seller represents and warrants that all merchandise delivered or services performed pursuant to this Order is processed, manufactured, represented, described, packaged, labeled, advertised, sold, invoiced and shipped in full compliance with all existing laws, regulations, standards, orders and rulings of all U.S. federal, state and local governments (and all departments, boards, bureaus and commissions thereof), including, but not limited to the

Federal Trade Commission Act, Fair Labor Standards Act, the Tariff Act of 1930, the International Trade in Endangered Species of Wild Fauna and Flora (as listed in the United States Endangered Species Act of 1973), the Consumer Product Safety Act, the Federal Flammable Fabrics Acts, the Textile Fiber Identification Act, the Magnusson-Moss Warranty Act, the Fair Packaging and Labeling Act, the Federal Hazardous Substances Act, Federal Child Labor Act, Occupational Safety, Health Act and Fair Products Labeling Act, the Consumer Product Safety Improvement Act of 2008, the California Air Resource Board Composite Wood Regulations, U.S. regulations prohibiting the use of ozone depleting chemicals (hydrochlorofluorocarbons), wage and hour laws and other applicable employment/labor laws. Seller agrees to defend, indemnify and hold harmless Buyer from Seller's breach of the warranties and representations contained in this paragraph. Seller's failure to provide any documents, warranties or laboratory results which Buyer requests to verify or warrant your compliance with federal, state or local laws, orders, rules, regulations shall be deemed to be a material breach of this Order.

7. Seller warrants and represents that its workers are treated fairly and who in all cases are performing work voluntarily, not put at risk of physical harm, fairly compensated, and allowed the right of free association and not exploited in any way. Seller further warrants and represents that it has not: (1) utilized child labor (child who is younger than the local age for completing compulsory education and in no event less than 14 years of age); (2) utilized prison or forced labor (forced labor is work or service which is extracted from any person under the threat of penalty for its nonperformance and for which the worker does not offer himself voluntarily); (3) engaged in discriminatory practices on the basis of gender, racial characteristics, age, cultural or religious beliefs; (4) permitted the use of corporal punishment or other forms of mental or physical coercion or intimidation; and (5) engaged in bribes, kick-backs or other similar unlawful or improper payments to any person or entity to obtain or retain business. Seller further warrants and represents that Seller's workers are covered by workers compensation insurance to the full extent required by Applicable Law. Seller agrees to defend, indemnify and hold harmless Buyer from Seller's breach of the warranties and representations contained in this paragraph. If Seller breaches these warranties and representations, Buyer may take all appropriate corrective action, which may include cancellation of this Order or any other Orders placed with Seller by Buyer in addition to any other remedies at law or in equity.
8. Seller shall furnish all materials, supplies, equipment and labor necessary to complete the services which are the subject of this Order (hereinafter referred to as the "Work") in accordance with the schedule established by Buyer.
9. All Work shall be done as an independent contractor and the persons doing Work shall not be considered employees of Buyer. Seller shall be solely responsible for all compensation, benefits and insurance for employment of such persons. Seller shall pay all taxes imposed by reason of the employment of such persons, including, but not limited to, any payroll taxes, social security taxes, and unemployment compensation taxes.
10. Seller shall maintain workers compensation insurance as required by law and comprehensive general and automobile liability insurance in form and amount satisfactory to Buyer. Unless otherwise specified, Seller's liability insurance shall have a combined single limit of liability of not less than \$1 million and shall include Buyer as an additional insured. Seller shall provide certificates evidencing such insurance.
11. Seller shall keep the Work site free from waste and rubbish and shall leave the site in a clean and workmanlike condition.
12. Seller shall, at its expense, obtain all licenses and permits and shall pay all inspection fees necessary to complete the Work. In the performance of the Work, Seller shall comply with all laws, ordinances, and regulations applicable thereto.
13. Without limiting Seller's liability under any other warranties contained in this Order, Seller warrants that the Work will be performed in a safe and workmanlike manner and that the Work will be sound, fit, and suitable for the purposes intended. In addition to the warranties given by Seller in this Order, Seller hereby assigns to Buyer any rights under warranty which Seller may have with respect to any goods which are incorporated in the Work or provided as part of the Work.
14. Without limiting Seller's liability under any warranties contained in this Order, Seller guarantees the Work for a period of one year from and after completion of all Work covered by this Order, or for such longer period as may be provided in any of the other terms of this Order. In the event any of the Work covered by this Order requires repair, replacement or adjustment during the guarantee period, Seller shall promptly make all necessary repairs, replacements or adjustments at its sole cost. The foregoing is in addition to any other remedies Buyer may have hereunder.

15. Seller shall defend, indemnify and hold harmless Buyer, its agents and employees, from any and all liability, claims, allegations, suits, damages, losses, penalties and expenses, including costs and attorneys' fees, arising out of, or in any manner based upon, the performance or nonperformance of the Work of this Order, or arising or occurring by reason of the Work, or the use thereof, or any defect therein or condition thereof.
16. In addition to the other events of termination provided in this Order, Buyer may terminate this contract if Seller fails to prosecute the Work with sufficient diligence in Buyer's sole discretion. In the event of such termination, or any termination "for cause", Buyer may take possession of the Work and any materials and equipment being used by Seller and may cause the Work to be completed in such manner as Buyer shall determine and Seller shall reimburse Buyer for the cost of completion.
17. Seller acknowledges that it is familiar with all conditions relating to the Work and the site and with all other matters and conditions which would affect the performance of this Order, and Seller assumes all risk with respect thereto. Commencement of Work constitutes Seller's acknowledgment that all plans, specifications and other contract documents relating thereto are sufficient for the completion of Seller's Work.
18. Seller agrees to complete the Work within the period of time required. Any overtime or extra personnel required to meet Buyer's schedule shall be solely at Seller's expense.
19. No price increase shall be permitted by reason of any claim of extra Work unless the extra Work was performed pursuant to a written order by Buyer setting forth the amount of the price increase.
20. Unless payment terms are otherwise specified in this Order, Buyer may choose to make payment for any Work performed hereunder in a lump sum or in installments. If payment is made in a lump sum, payment will be made within 30 days after the completion of all Work covered by this Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 30 days after the completion of all Work covered by this Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 30 days after receipt of Seller's application for payment. The amount of each installment shall not be more than 90% of the portion of the contract price attributable to the Work in place as of the 25th day of the preceding month as determined by Buyer less the aggregate of all previous payments. The final payment will be made within 30 days after completion of all Work covered by this Order and the receipt of Seller's final application for payment. Each application for payment shall include appropriate sworn statements and waivers or releases of mechanic's liens from all subcontractors and material suppliers relating to the Work for which payment is requested, together with such other documentation as Buyer may reasonably request.
21. Seller represents and warrants that the merchandise ordered herein shall be free from any defects in design, material or workmanship and be merchantable at the time of delivery to Buyer and at the time of use and that it shall be fit and safe for the particular purposes for which it is intended to be used. Seller represents and warrants that the merchandise shall not infringe or encroach upon the contractual or proprietary rights of any other person, firm or corporation, including without limitation, the patents, trademarks, copyrights, rights of privacy, trade secrets or other intellectual property right of such third party.
22. Seller losses shall defend, indemnify and hold harmless Buyer from and against all liability, claims, losses, suits, allegations, damages and expenses (including reasonable attorneys' fees) on account of any defects in the merchandise, any claim or suit for unfair competition, or alleged infringements of patents, copyrights, trade secrets, trademark or other intellectual property right, or on account of Seller's violation of any of the terms hereof, including but not limited to compliance with all relevant laws and regulations.
23. Seller shall procure and maintain comprehensive general liability insurance for an amount not less than One Million Dollars (\$1,000,000) which shall provide at a minimum Broad Form Vendor's Coverage to cover the indemnification obligations described herein. At Buyer's request, Seller shall provide Buyer with certificates of insurance evidencing such coverage. Seller shall be named as an additional insured on said policy.
24. Buyer's rights herein reserved may be exercised at any time as long as any breach of any of the terms or conditions hereof shall continue, and shall not be deemed waived by delay or by waiver of such condition or any other condition hereof in previous transactions between the parties.
25. Seller may not assign any rights or delegate any duties which Seller may have under this Order in whole or in part.
26. This Order shall be governed by the laws of the State of Wisconsin. Seller hereby agrees that any and all disputes arising under this Order shall be subject to adjudication only in the state courts of Waukesha County, Wisconsin or the United States District Court in Milwaukee, Wisconsin, and Seller hereby consents to the exclusive jurisdiction of those courts. In any dispute arising hereunder the prevailing party shall be entitled to attorneys' fees.

27. Buyer shall have the right to set off any amounts which may become payable by Buyer whether arising under this Order or otherwise.
28. Payment of freight charges shall not affect passage of title or who bears the risks of loss in transit. Until Buyer has inspected the merchandise shipped and/or the Work performed under this Order and accepted it as being in conformity with all representations made by Seller when it was ordered, Seller's delivery obligations shall not be deemed complete, nor shall title pass to Buyer. Notwithstanding the foregoing, Buyer has no obligation to inspect the goods or Work and Buyer's payment or retention of the goods or Work shall not constitute an acceptance of goods or Work not in compliance with this Order and shall not affect Buyer's right to reject or return the same. Any such nonconforming goods shall be treated as defective merchandise, as set forth above.
29. Buyer shall at all times have title to specifications, designs, artwork, negatives, programs, software, photographs, plates and other work in progress furnished and intended for use in connection with this Order (collectively "Work Product"). Any Work Product, merchandise manufactured solely for Buyer or other services performed by Seller in connection with this Order shall be deemed to be "Work Made for Hire". Any Work Product or "Work Made for Hire" shall be the sole property of Buyer and shall not be utilized by Seller in any way without the express written consent of Buyer. Seller shall use the Work Product or "Work Made for Hire" only in connection with this Order and shall not disclose Work Product or "Work Made for Hire" to anyone other than Buyer or Seller's employees, subcontractors, or government inspectors. Seller shall, upon Buyer's request or upon completion of the Order, promptly return all Work Product or "Work Made for Hire" to Buyer.
30. Upon Buyer's acceptance of the goods or Work, all title, interest, and rights of Seller in and to the goods and Work including, but not limited to, any intellectual property incorporated in the goods or Work shall be transferred to Buyer, free and clear of all claims and liens whatsoever.
31. This Order is specifically made subject to the terms and conditions of any Electronic Data Interchange Agreement entered into between Buyer and Seller ("EDIA") and Buyer's Terms of Engagement, if any. In the event of a conflict between the EDIA, Terms of Engagement and the terms of this Order, the terms of this Order shall prevail.
32. If Seller fails to perform as specified in this Order, Buyer may, without limitation, and in addition to other remedies set forth herein or provided at law or in equity, (i) cancel this Order in whole or in part by written notice to Seller and Seller shall be liable to Buyer for all damages, losses and liability incurred by Buyer resulting from Seller's breach, or (ii) obtain the goods or services ordered herein from another source with any excess costs therefrom chargeable to Seller. Any sums payable to Seller shall be subject to all claims and defenses of Buyer, whether arising from this or any other transaction, and Buyer may set off and deduct any such sums against any present or future invoices or amounts owed to Seller by Buyer.
32. Seller is fully responsible for all losses or damages incurred as a result of Seller's performance of any services at Buyer's facilities, whether performed by Seller, Seller's employees, agents, affiliates and/or subcontractors. In addition to any other indemnification obligations set forth herein, Seller agrees to defend, indemnify and hold Buyer harmless from any and all Claims arising out of or in any manner resulting from Seller's use of, or performance of any services at, Buyer's facilities including, but not limited to: (i) any act, omission or negligence by Seller, Seller's employees, agents, affiliates and/or subcontractors; and (ii) damage to or destruction of personal or real property of Buyer or any third party or the injury or death to persons, including without limitation, employees or invitees of Buyer and Buyer, Buyer's employees, agents, affiliates and/or subcontractors. Seller shall, by entering upon and using any Buyer's facilities, be deemed to have accepted the Buyer's facilities in its then condition. Buyer assumes no liability for damage to or loss of Seller's property or the property of Seller's employees, agents, affiliates and/or subcontractors. Seller acknowledges that any services Seller conducts at Buyer's facilities are conducted entirely at Seller's own risk, and Seller hereby releases Buyer from any claims, liability or loss occurring at Buyer's facilities. Seller agrees to use best efforts not to hinder any of Buyer's operations or to detract from Buyer's customer experience while at Buyer's facilities. Seller shall immediately remove all materials, equipment and rubbish Seller places on Buyer's facilities, and restore, at Seller's sole cost and expense, Buyer's facilities to the condition it was in immediately prior to Seller's entrance onto the facilities.
33. Seller shall furnish Buyer with proof of delivery at Buyer's request. In the event of Seller's failure to notify Buyer's Accounts Payable Department in writing within six months following shipment of goods in completion of services pursuant to this Order of Buyer's nonpayment of Seller's invoices, Buyer shall have no further obligation to pay Seller for goods shipped or services provided pursuant to this Order. Unless an action is commenced or set-off interposed within one (1) year after the same accrues, Seller shall be banned from commencing an action or

interposing a set-off against Buyer for breach of contract, nor shall any counterclaim or set-off be interposed by Seller, by reason thereof, including without limitation: (i) for monies due or to become due hereunder, (ii) for the amount of any discounts, allowances or other deductions from remittances made on account of merchandise purchased hereunder, (iii) disputing Buyer's right to return all or any part of the merchandise purchased hereunder, or (iv) the fact of the making of such returns, unless such action is commenced or set-off interposed within one (1) year after the same accrues.