

Burlington Coat Factory Warehouse Corporation (“Burlington”)
Standard Terms and Conditions – Non-Merchandise Products and Services

1. **Acceptance** - ALL PURCHASES OF PRODUCTS AND/OR SERVICES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON SELLER’S (AS DEFINED BELOW) ASSENT THERETO. THE TERMS AND CONDITIONS CONTAINED HEREIN WILL BE CONTROLLING, AND ANY ADDITIONAL, CONTRADICTORY, AND/OR INCONSISTENT TERMS AND CONDITIONS SET FORTH IN ANY ACKNOWLEDGMENT, QUOTE, ACCEPTANCE DOCUMENTS, INVOICES, OR OTHER DOCUMENTATION REQUESTED FROM AND/OR PROVIDED BY SELLER ARE EXPRESSLY REJECTED. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON BURLINGTON UNLESS AGREED TO IN A SEPARATE WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BURLINGTON. ACCEPTANCE OF A PURCHASE ORDER, SHIPMENT OF PRODUCTS TO BURLINGTON OR PERFORMANCE OF SERVICES (AS DEFINED BELOW) CONSTITUTES SELLER’S AGREEMENT TO: (A) THE PURCHASE ORDER (AS DEFINED BELOW); AND (B) THESE TERMS AND CONDITIONS.
2. **Products** – Burlington hereby retains the seller (“Seller”) set forth in the purchase order form into which these terms and conditions are incorporated by reference (including attachments and other documents incorporated thereto, collectively the “Purchase Order”) on the terms and conditions hereinafter stated, to supply (i) the goods, materials, supplies, items, or equipment (the “Products”) and/or (ii) to furnish the necessary personnel, materials, services, equipment, facilities, oversight, management and all other items necessary for the performance of the work (the “Services”) described in the Purchase Order. In the event of any conflict between these terms and conditions and the face of the Purchase Order or the Purchase Order’s attachments or other documents incorporated therein, these terms and conditions shall control. Time is of the essence in the delivery of the Products and/or performance of the Services, and Seller shall deliver the Products and/or perform the Services described in the Purchase Order, and shall complete delivery of the Products and/or perform the Services by the dates set forth therein, and if no date is listed, then within a prompt amount of time but in each case, no less than ten (10) business days from the date of the Purchase Order or as otherwise reasonably determined by Burlington. In the event of any anticipated or actual delay in the delivery of Products and/or performance of Services, Seller shall promptly notify Burlington of such delay and the additional time required in which to deliver or perform. If requested by Burlington, Seller shall expedite delivery or performance to avoid or minimize delay. Seller shall be liable for and compensate Burlington for all damages or penalties incurred by Burlington as a result of Seller’s failure to timely deliver or perform.
3. **Prices/Rates** – Prices for the Products and/or rates for the Services shall be as set forth in the Purchase Order, and shall be fixed unless otherwise expressly provided therein. No extra charge or fees of any kind, including but not limited to charges for overhead, boxing, packaging, crating, freight or delivery shall be allowed unless specifically agreed to in advance by Burlington in writing. Seller shall bear the sole responsibility for payment of compensation and taxes for its personnel, including all health or disability insurance, retirement benefits, or other welfare or pension benefits, and will indemnify and hold harmless Burlington from and against any loss, cost, damage, liability, or expense (including reasonable attorney’s fees) arising from or relating to Seller’s failure to collect or remit such taxes. If during the course of performance, Burlington desires a change to the Purchase Order, Burlington shall have the right to request a change order in writing (“Change Order”). Seller shall within three (3) business days after receipt of Burlington’s written request provide a written estimate to Customer of any changes to the cost of Products or Services or the time required for performance of the Services arising from the Change Order. Neither party shall be bound by any Change Order unless mutually agreed upon in writing.
4. **Payment Terms** - Seller shall invoice only after Burlington has received and accepted (as set forth below) the Products. Seller shall invoice Burlington monthly in arrears for all Services performed by Seller under the Purchase Order. All invoices submitted for Services performed must set forth (i) the Burlington business partner for which Services were provided; (ii) the locations specified for the work; (iii) the itemized fees, costs and expenses for such Services and the number of hours worked and description of the work performed by day by individual (if hourly fees apply); and (iv) any other information reasonably requested by Burlington. Burlington shall have the right to reject incomplete, inaccurate, or disputed invoices in its sole discretion. Payments by Burlington of undisputed invoices shall be payable within 45 days after Burlington’s receipt of Seller’s complete and accurate invoice. If Seller fails to make deliveries by the date or dates required by a Purchase Order, or if Seller delivers amounts in excess of the amount set forth in this Order or otherwise delivers in a manner not in conformity with a Purchase Order, Burlington may retain and/or reject or return such Products without waiving Burlington’s right to recover damages for Seller’s breach of contract. If Burlington elects to retain Products in excess of the amount set forth in a Purchase Order, it shall do so at no cost to Burlington. If Burlington elects to accept early or late delivery, then unless waived in writing by a Vice President of Burlington, a Purchase Order will be subject to a 2% per day discount for each day of delayed or early delivery or such higher discount required by Burlington in order to accept delivery. Burlington shall have no obligation to make any payment prior to receipt of all Products or Services covered by a Purchase Order to Burlington’s satisfaction. Burlington reserves the right at any time to accept any part of the Products ordered without regard to rejection of the balance. Seller agrees that, if at any time during the term of a Purchase Order, Seller quotes or sells at lower net prices to others, the same Services or Products under the same or similar conditions, such lower prices shall be substituted for the prices set forth herein.
5. **Taxes** – The amount of taxes imposed will be separately stated on Seller’s invoice and all amounts shown will include all federal, state and local sales, use, excise, and similar taxes applicable to the Products sold or provided, and Seller shall collect from Burlington and pay any and all such taxes, except taxes required by law to be paid or borne by Burlington. Seller shall (a) be responsible for penalties, interest or other charges arising from Seller’s failure to collect or remit taxes; and (b) indemnify and hold harmless Burlington from and against any loss, cost, damage, liability, or expense (including reasonable attorney’s fees) arising from or relating to Seller’s failure to collect or remit taxes.

6. **Warranties** – Seller hereby represents and warrants that: (a) it has all permits, licenses, registrations and other similar documents necessary to sell and deliver the Products hereunder; (b) it and its employees and permitted subcontractors shall abide by all Burlington policies, practices, rules, regulations and security procedures if performing Services at or delivering Products to a Burlington location; and (c) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering.

Seller hereby represents and warrants that the Products shall: (a) be free from defects in design, operation, workmanship and materials, and conform in all respects to all labeling and product insert sheets and other product specifications and claims made by Seller for, or the manufacturer of, the Products; (b) be produced consistently with highest industry manufacturing practices and highest industry quality control practices, and shall be merchantable and fit for their intended purposes; (c) be transferred with good and marketable title, free and clear of any liens or encumbrances; (d) have been manufactured, packaged, labeled, priced, sold, and delivered in compliance with all applicable federal, state or local laws, ordinances, regulations, codes or standards; (e) comply with all import and export laws, and comply with all government laws and regulations that apply or are related to such Products; (f) shall not infringe upon any patent, trade name, trade dress, trademark, service mark, copyright, or other proprietary rights of third parties; and (g) shall not contain any conflict minerals as defined pursuant to Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act unless otherwise disclosed to Burlington in advance (in which case Seller shall obtain a written acknowledgement of such disclosure from a corporate officer of Burlington and cooperate with Burlington to fulfill any obligations to which Burlington may be subject in connection therewith). If Seller showed Burlington samples of the Products, Seller warrants that the products will conform to such samples in every respect as to quality, material, workmanship, fit and appearance. Seller authorizes Burlington to pass through all Product warranties to all of Burlington's affiliates as well as Burlington's rights to indemnification.

Seller hereby represents and warrants to Burlington that: (a) it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with the highest industry standards for similar services and shall devote adequate resources to meet its obligations under this Purchase Order; (b) it is in compliance with, and shall perform the Services in compliance with, all applicable laws; (c) Burlington will receive good and valid title to all deliverables, free and clear of all encumbrances and liens of any kind; (d) (i) none of the Services, deliverables and Burlington's use thereof infringe or will infringe any intellectual property right of any third party, and, (ii) as of the date hereof, there are no pending or, to Seller's knowledge, threatened claims, litigation or other proceedings pending against Seller by any third party that may have an adverse impact upon Seller's ability to perform the Services hereunder; and (e) the Services and deliverables shall be acceptable to Burlington and will be in conformity in all respects with all requirements or specifications stated in a Purchase Order and any associated statement of work.

7. **Defects/Non-Conformity** - Burlington, at its sole option, may retain, cancel, reject or dispose of all or any part of a Purchase Order which fails to comply with the foregoing warranties, and Burlington's decision as to compliance shall be, in the absence of bad faith, final and binding on Seller in all cases without inspection by Seller, the retention or delivery of proof of nonconformity by Burlington or any other action. Seller authorizes Burlington to at any time (and regardless of the time of the discovery of the nonconformity): (i) dispose of any such nonconforming Products by any available means, and (ii) debit Seller's account by (or otherwise collect from Seller) (a) the amount invoiced by Seller for such nonconforming Products and (b) appropriate freight, handling and other expense Burlington may incur in connection with such nonconforming Products. In addition, Burlington may cover by seeking alternative sources for the Products. Should Burlington exercise its option to cover, Seller shall be liable to Burlington for Burlington's increased costs, including any increases in prices charged by such alternative sources for the Products. Further, Seller shall be responsible for any fines, late fees, liquidated damages or penalties incurred by Burlington caused by delivery of any defective or non-conforming Products pursuant to this subsection.
8. **Delivery** - All Products shipped by Seller shall be shipped FOB Destination, prepaid to the location designated on a Purchase Order. Title and risk of loss of all Products will pass to Burlington upon Seller's delivery of such Products directly to Burlington. Proof of delivery will be required upon Burlington's request. For each Product sold to Burlington and shipped by Seller to Burlington's stores located in Puerto Rico, Seller shall provide Burlington with a current and accurate Country of Origin (COO), Harmonized Tariff Schedule US (HTS US) and Export Control Classification Number (ECCN), as applicable. Seller shall pack, package, mark and otherwise prepare all Products for shipment in accordance with good commercial practice, acceptable to common carriers for shipment, and adequate to ensure their safe arrival at the ultimate destination. Seller shall mark all containers with necessary lifting, handling and shipping information, purchase order number, and date of shipment.
9. **Proprietary/Confidential Information** - Seller shall keep any Burlington Confidential Information confidential, and shall only use it for the purpose for which such Confidential Information was disclosed. "Burlington Confidential Information" means the whole or any portion of any knowledge, data or information relating in any way to the activities or business of Burlington or an affiliate thereof which may be in tangible or intangible form, expressed orally, in writing, in electronic or physical form, or in any other form (whether or not marked confidential). "Personal Information" means all personal information of an individual including, without limitation name, address, date of birth, driver's license number or state-issued identification card number, telephone number, credit score, social security number or account, financial account number (including, without limitation, ABA, routing, or bank account information), credit or debit card number, personal identification number, access code or security code. Personal Information shall be treated as Burlington Confidential Information hereunder. Seller agrees and covenants that it shall: (i) keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; (ii) use and disclose Personal Information exclusively for the purposes for which the Personal Information, or access to it, is provided

pursuant to the terms and conditions of the Purchase Order, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for Seller's own purposes or for the benefit of anyone other than Burlington, in each case, without Burlington's prior written consent; and (iii) not, directly or indirectly, disclose Personal Information to any person, including any, subcontractors, agents, outsourcers or auditors, without express written consent from Burlington. Seller represents and warrants that it has in place, and is adhering to, a comprehensive, written security plan to safeguard and protect the confidentiality of all Personal Information received hereunder in compliance with all provisions of applicable law. Seller agrees to comply with all applicable federal, state and local requirements, laws and regulations (and all applicable BCF policies) in its use or provision of the Service, as applicable, including without limitation any laws related to the privacy of data, and the storing, disclosure and distribution of Personal Information, including but not limited to personally identifiable information as defined in any law. Without limiting the generality of the foregoing, Seller shall comply in all respects with Massachusetts 201 CMR 17 including, without limitation, implementing and maintaining appropriate security measures for Personal Information. Seller shall be responsible for any claim, loss, damage, or expense relating to the loss or misuse of Personal Information.

10. **Indemnity** - Seller shall defend, indemnify and hold harmless Burlington, Burlington's affiliates, and the officers, directors, employees, agents, successors and permitted assigns of Burlington and Burlington's affiliates (each, a "Burlington Indemnitee") from and against all Losses (as that term is defined herein) arising out of or resulting from any third party claim, suit, action or proceeding (each, an "Action") arising out of or resulting from: (a) the willful, fraudulent or negligent acts or omissions of Seller, Seller's personnel or subcontractors; (b) Seller's breach of any representation, warranty or obligation of Seller set forth in this Purchase Order; (c) sale or use of the Products hereunder by Seller; (d) personal injury, wrongful death or property damage arising out of or relating to any activities to be undertaken by Seller or its subcontractors or agents pursuant to the terms of this Agreement; or (e) any mechanic's lien resulting from work performed by Seller or its agents or subcontractors in connection with a Purchase Order and which has been paid for by Burlington (and Seller agrees to immediately have any such lien discharged). For purposes of these terms and conditions, "Losses" mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
11. **Insurance** - Seller shall obtain and maintain all insurance coverage required by law as well as appropriate insurance coverage to protect against any and all claims or liabilities that may arise directly or indirectly as a result of its performance hereunder. Required coverages and minimum policy limits:
 - (a) Workers Compensation & Employer's Liability:
 - (i) Worker's Compensation: Statutory
 - (ii) Employer's Liability: \$1,000,000
 - (b) Commercial General Liability:
 - (i) Bodily Injury & Property Damage: \$2,000,000 Combined Single Limit, per occurrence
 - (ii) Completed Operations: \$2,000,000 Combined Single Limit, per occurrence
 - (c) Automobile Liability:
 - (i) Bodily Injury & Property Damage: \$1,000,000 Combined Single Limit, per occurrence

At the sole discretion and request of Burlington, Seller will also procure and maintain professional liability, errors and omissions insurance or similar coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Seller shall arrange a waiver of subrogation by the applicable insurance company under each policy and each of the foregoing policies of insurance shall name Burlington, its officers, officials, agent and employees as an additional insured or loss payee thereunder. Each such insurance policy shall be primary and non-contributing to any insurance provided by Burlington. Coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice has been given directly to Burlington. Seller shall maintain insurance with duly licensed or approved non-admitted insurers in with an "A.M. Best" rating of not less than "A-." Seller shall furnish Burlington proof of coverage evidenced by certificates of insurance reasonably acceptable to Burlington.

12. **Miscellaneous**

- (a) Set off - Burlington shall have the right to set off any monies owed to Burlington by Seller (including for breach of contract or warranty) against any monies due Seller from Burlington under any Purchase Orders or contracts between the parties.
- (b) Code of Conduct - All the employees of Burlington and its consolidated subsidiaries are governed by Burlington's Code of Conduct, a copy of which can be viewed at its web site: www.burlington.com. Seller shall conduct its business with Burlington in conformity with all applicable laws, rules and regulations, and judicial and administrative interpretations thereof, and in accordance with the highest ethical standards.
- (c) Termination - Either party may terminate this Purchase Order, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party breaches this Purchase Order, and such breach is incapable of cure, or with respect to a breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

Burlington may, in its sole discretion, terminate this Purchase Order, in whole or in part, at any time without cause, by providing at least thirty (30) days' prior written notice to Seller. Seller may, in its sole discretion, terminate this Purchase Order, in whole or in part, at any time without cause, by providing at least one hundred eighty (180) days' prior written notice to Burlington.

(d) Force Majeure - No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Purchase Order, for any failure or delay in fulfilling or performing any term of this Purchase Order (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: acts of God; flood, fire or explosion; war, invasion, riot or other civil unrest; actions, embargoes or blockades in effect on or after the date of this Purchase Order; or national or regional emergency (each of the foregoing, a "Force Majeure Event"). A party whose performance is affected by a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

(e) Merger, Modification, Waiver - No amendment or modification of these terms shall be binding on Customer unless reduced to writing and signed by an authorized officer of Customer. Customer may update these terms from time to time upon posting to the web link set forth on the face of the Purchase Order. No waiver of these terms shall be binding on either party unless reduced to writing and signed by an authorized officer of the party to be bound, and such waiver shall be effective only in the specific instance and for the specific purpose for which given, and shall not be construed as a waiver of any subsequent breach. The failure of either party to enforce at any time or for any period of time any of the provisions of this Purchase Order shall not be construed as a waiver of such provisions or of the right of such party thereafter to enforce each and every such provision.

(f) Applicable Law - This Purchase Order is made pursuant to, and shall be construed and enforced exclusively in accordance with, the internal laws of the State of New Jersey (and United States federal law, to the extent applicable), without giving effect to otherwise applicable principles of conflicts of law, and each party consents to the exclusive jurisdiction of the courts (state or federal) located in the State of New Jersey.

(g) Authority to Enter Into Agreement - Each party represents and warrants that it is authorized to enter into this Purchase Order and that in so doing it is not in violation of the terms or conditions of any contract or other agreement to which it may be a party.

(h) Assignment - This Purchase Order shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and designees; provided, however, neither party shall have the right to transfer, assign or delegate its rights or obligations under this Purchase Order or any portion thereof without the prior written consent of the other party (except that Burlington may assign this Purchase Order to an affiliate or successor entity without such consent).

(i) Subcontractors - Seller shall not, without the prior written approval of Burlington, appoint subcontractors or agents to perform any services hereunder. Seller shall remain fully liable to Burlington for the performance of any permitted subcontractor.

(j) Liens and Claims – Seller warrants that there are no liens, encumbrances, or claims against the project or deliverables. Further, Seller agrees that, upon request by Burlington, it shall furnish satisfactory evidence, in Burlington's sole discretion, that all amounts due for labor and material furnished by Seller have been paid, including but not limited to releases of bond rights and lien rights by all persons who have furnished labor, material or other things in the performance of the Services. Seller agrees that payment of money otherwise due Seller may be withheld by Burlington until such evidence has been provided.

(k) Nature of Relationship - Neither party, its employees or permitted subcontractors or agents shall, under any circumstances, be considered to be an agent, partner, joint venturer or representative of the other party, or anything other than an independent contractor for all purposes of this Purchase Order, and except as may be authorized specifically in writing, neither Party has express or implied authority to bind the other in any manner whatsoever by virtue of this Purchase Order.

(l) Construction and Interpretation - The captions in this Purchase Order have been inserted for convenience of reference only and do not constitute a part of, and shall not be considered in construing, this Purchase Order. If any portion of this Purchase Order is held by a court of competent jurisdiction to be invalid for any reason, the remainder of this Purchase Order shall not be deemed invalid but shall remain in full force and effect. No course of dealing, usage of trade or course of performance shall supplement, explain or amend any term, condition or instruction of this Purchase Order or any provision of Products hereunder.