

# Mercury Promotions & Fulfillment

## Purchase Order Terms and Conditions

Acceptance – This purchase order together with documents specifically adopted by reference including specifications and releases subsequently issued (“PO”) constitutes the entire agreement between the parties concerning the goods or services specified unless otherwise agreed in writing by the Buyer. The terms “PO” and “agreement” are used interchangeably. These terms and conditions constitute the parties’ contractual agreement and supersede any previous oral or written representations including those in Seller’s quotes or acknowledgements. Seller’s written acknowledgment, commencement of work on the goods or services specified, or shipment of such goods constitutes Seller’s acceptance and is expressly limited to these terms unless otherwise agreed to in writing by Buyer. Seller’s additional or different terms, whether deemed an acceptance or offer, or any attempt by Seller to vary in any degree any of the terms of this PO, is objected to and rejected and shall be deemed a material alteration of this PO. This PO shall be deemed accepted by Seller without any additional or different terms unless agreed to otherwise in writing by Buyer.

Buyers Commitment- Buyer is not committed to purchase any goods or services except in the quantity and at the price on this PO or as provided for in the firm commitment period of any separate release.

Price – The goods or services will be furnished at the price this PO or such other price as Buyer may in writing designate. Seller warrants that the price for the goods including discounts and rebates is no less favorable than those currently extended to any other customer of the Seller for the same or similar goods in similar quantities. In the event Seller reduces its price for the goods to other customers, Seller agrees to reduce the prices to Buyer correspondingly. Seller warrants that price for goods or services specified shall be complete, and that no additional charges of any type shall be added without Buyer’s prior written consent including, but not limited to, charges for shipping, packing, labeling, storage, cartage, insurance, taxes, brokerage fees, and customs duties. All cash discounts shall be computed from the date of receipt by the Buyer of a final invoice or receipt of the goods or performance of services, whichever occurs later.

Delivery – Terms of delivery are as stated in this PO or as otherwise agreed in writing by the Buyer. Seller agrees that time is of the essence and it is Seller’s responsibility to cause timely shipment of the proper quantity of goods and /or timely providing of services. Seller shall not make and Buyer shall not be liable for material or labor commitments or production arrangements in excess of the amount or in advance of the time necessary to comply with this agreement.

Inspection/Testing – Payments for goods or services or inspection or testing by Buyer does not constitute acceptance or relieve Seller of its obligations. Buyer may inspect goods or services provided and reject any or all goods or services which are in Buyer’s judgment, defective or non-conforming. Rejected goods may be returned to Seller at Seller’s expense and, in addition to Buyer’s other rights, Buyer may charge Seller all expenses relating to the inspection and return. Buyer may require Seller to provide or cause to be provided, to Buyer’s satisfaction, any services previously rendered in a non-conforming, negligent, defective or unworkmanlike manner and to pay to Buyer any related damages. Nothing contained in the specifications or this PO relieves Seller from its obligation of testing, inspection, and quality control.

Provision of Goods and / or Services - Without prejudice to any other rights of Buyer hereunder or at law, in the event of defective Goods or Services or breach of warranty, notwithstanding that such defect or breach may have been discovered by buyer after delivery or performance, Buyer, in its sole discretion and at Seller’s risk and expense, may do any or all of the following: (i) terminate the relevant Purchase Order(s) at any time; (ii) reject and return the Goods; (iii) require the Goods to be replaced or repaired by Seller; (iv) require the Serviced to be re-performed by Seller. Without prejudice to any rights and remedies which Buyer may have hereunder or at law, in the event that Seller does not replace or repair the Goods or re-perform the Services, as the case may be, within thirty (30) days of receipt of notice from Buyer of the defect or breach of warranty, buyer may in its sole discretion and at Seller’s risk and expense do any of the following: (a) purchase equivalent goods elsewhere; (b) have defects in the Goods repaired by others; (c) have the services re-performed by others.

Warranties – Seller warrants that for the Warranty period (defined below) all goods and services provided under this PO : (a) shall conform to specifications , all applicable samples, models , drawings, descriptions, and standards; (b) are packaged marked and labeled properly and according to Buyer’s instructions ; (c) are new, merchantable, fit for intended purposes, safe and free from defect in materials, workmanship and design; (d) shall be manufactured and sold in compliance with all laws and regulations ; (e) all services shall be performed in a competent , workmanlike manner and in accordance with industry standards; and (f) Buyer shall receive title to the goods that is free and clear of any liens , encumbrances and any actual or claimed patent , copyright, or trademark infringement. Warranty period shall mean the longer of the following time periods; (a) 18 months from the date of first use of the goods by

Buyer or acceptance of goods or services, whichever is later; or (b) if goods are used in Buyer’s finished product, 18 months from the date of incorporation into Buyer’s finished product or the time period of warranty Buyer gives to third parties, whichever occurs later. None of the remedies available to Buyer for breach of warranties may be limited except to the extent agreed to by Buyer in writing and signed and authorized representative. Any quality levels or requirements agreed to by the parties are in addition to and do not limit these warranties or Buyer’s rights there under. All warranties shall survive inspection, testing, acceptance of goods or services by Buyer, and expiration or termination of this purchasing arrangement.

Indemnification – Seller agrees and shall protect, defend, hold harmless and indemnify Buyer and Buyer’s successors, assigns, agents and customers from and against any claims, damages , losses, costs and expenses (including any attorney’s fees and any amounts paid in settlement) arising out of any (1) actual or alleged infringements of any patent , trademark , copyright, or unfair competition by reason of the manufacture , use or sale of any goods or the providing of any services under this PO (2) actual or alleged death or injury to any person , damage to property, or any other damage or loss suffered , including economic loss, costs of rework or recall , that are alleged to result from or any result from any (a) defect in goods or services or breach of warranty , contact or negligence , including Buyer’s failure to warn due to Seller’s defective goods ; or (b) actual or alleged violation by Seller of any law , statute , administrative order , rule or regulation.

Insurance – Seller agrees to obtain and maintain, at its expense commercial liability insurance coverage providing coverage for Buyer as an additional insured and insuring against liability for any injury, damage, or loss arising out of an alleged defect or deficiency of Seller’s goods or services, including for products – completed operations hazards regardless of the theory of liability or causation alleged in the underlying lawsuit or claim. Such insurance shall be primary to and not in excess of or contributory with other insurance available to Buyer and provide coverage in an amount equal to the full amount maintained by Seller in the normal course of Seller’s business (including excess and umbrella liability coverage), but in no event shall such a combined coverage be in an amount less than \$5,000,000 per occurrence. Seller shall provide Buyer annually with a certificate of insurance evidencing this coverage or policy if requested by Buyer.

Consumer Product Safety – Seller shall notify Buyer immediately any goods or services provided under this PO (a) fail to comply with any applicable consumer product safety rule; (b) contain a defect which could create a risk of injury to the public and/or obligate Buyer under any law or regulation to warn the public of such defect ; or (c) contain or were manufactured with a chemical (i) known or specified in any law or regulation to be harmful or injurious to human health or reproduction or the environment; or (ii) which creates an obligation under any law or regulation for the Seller or Buyer to label the goods or warn that Seller’s goods contain or were manufactured with such chemicals.

Independent Contractor – Seller and Buyer are independent contracting parties and nothing in this agreement shall make either party the agent of the other for any purpose whatsoever, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of each other.

Confidentiality - Seller shall consider specifications and all other information provided by Buyer to be confidential and the property of the Buyer, and shall hold and use for the sole benefit of the Buyer. Seller shall not disclose any specifications or other information to, use or reproduce it for, any third party without prior written consent of Buyer, or perform any act adverse to the interest of the Buyer. Such other information includes, but is not limited to, samples, models, drawings, and data in machine readable form descriptions of goods or services, prices, quantities, and other documents prepared by Seller or Buyer in connection with this PO. Unless otherwise agreed in writing, Buyer does not have and shall have no obligation to treat as proprietary or confidential, any commercial, financial or technical information disclosed in any manner or at any time by Seller to Buyer.

Governing Law and Venue - This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan, without regard to conflict of law principles, and shall benefit and be binding upon the parties hereto and their respective successors and assigns. Further, all actions or proceedings instituted by any party relating to this Agreement shall be instituted in the Oakland County Circuit Court and the parties do hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

Force Majeure - The parties shall not be considered in default of this Agreement or liable for fees, costs and/or damages, for any failure to perform occasioned by an act of God, force of nature, physical casualty, accident, war or war-like activity, civil commotion, labor dispute, government action or other cause beyond the reasonable control of the parties.