

Purchase Order Terms and Conditions

GENERAL

WHEREVER REFERENCE IS MADE TO A PURCHASE ORDER OR TO THE "CONDITIONS OF CONTRACT", SUCH REFERENCE SHALL INCLUDE THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH IS A BINDING AGREEMENT BETWEEN THE PARTIES. FOR ALL NOTICES AND INQUIRIES PLEASE CALL (210) 938-6703 OR EMAIL CENTRAL.PURCHASING@HEB.COM

1. Shipment of Merchandise. TIME IS OF THE ESSENCE REGARDING THIS PURCHASE ORDER; MERCHANDISE MUST BE SHIPPED ON DATE SPECIFIED, BUT NOT BEFORE OR AFTER. Please advise immediately if goods specified in the Purchase Order or any part cannot be shipped on specified ship date, showing order number and department number. At H-E-B's option, in the event of shipment or receipt of less than the items ordered, H-E-B may either accept and pay for only the items received, pro rate based on the unit price of the items ordered, or reject the entire shipment unless partials are authorized on face of Purchase Order.

- a. It is understood and agreed, in addition to remedies provided by law, that if the goods specified in this Purchase Order or any part hereof are not shipped by the time specified on the face hereof, H-E-B may reject the late shipment without cancellation of this Purchase Order as to the later shipments. It is further understood and agreed that for purposes of this paragraph each shipment required hereunder is to be considered later shipments. It is further understood and agreed that for purposes of this paragraph each shipment required hereunder is to be considered separately and H-E-B's right to reject a late shipment shall not be affected by acceptance of prior late shipments under this Purchase Order or by acceptance of other late shipments from Vendor.
- b. Merchandise shipped prior to the date specified on this Purchase Order will at H-E-B's option, either be subject to anticipation and a warehouse charge of 1% per month or actual costs, if higher, and an adjustment of the payment due date by the number of days shipped early, or, may be returned at Vendor's expense to be held by Vendor for H-E-B until specified shipping date.

2. Validity, Terms of this Purchase Order. Vendor's commencement of work on the goods subject to this Purchase Order or shipment of such goods, whichever occurs first, shall be deemed acceptance of H-E-B's offer to purchase contained in this Purchase Order. Any acceptance of this Purchase Order is limited to acceptance of the express terms of the offer, including the shipping, routing and billing instructions contained herein and on the face and back hereof and any attachments or standing instructions previously furnished Vendor by H-E-B. Any proposal for additional or different terms or any attempt by Vendor to vary in any degree any of the terms of the offer in Vendor's acceptance, invoice, or document or activity is hereby objected to and rejected. Such proposals, however, shall not operate as a rejection of the offer unless such as variances are in the terms of the compliance warranties, description, quantity, price or delivery schedule of the goods, but shall be deemed a material alteration thereof, and the offer shall be deemed accepted by Vendor without such additional or different terms. If this Purchase Order shall be deemed an acceptance of a prior offer by Vendor, such acceptance is limited to the express terms contained herein and on the face and back of this Purchase Order and in any attachments hereto and any standing instructions previously issued to Vendor by H-E-B. Additional or different terms or any attempt by Vendor to vary in any degree any of the terms of this Purchase Order shall be deemed material and are objected to and rejected, but this Purchase Order shall not operate as a rejection of the Vendor's offer unless it contains variances in the terms of the compliance warranties, description, quantity, price or delivery schedule of the goods.

3. Cancellation, Termination. Without prejudice to any other rights or remedies which H-E-B might have, H-E-B may cancel this Purchase Order in whole or in part if there is any defect in workmanship or quality of the goods

or their packaging or labeling or if there is any breach of Vendor's warranties hereunder, or if there is any delay in delivery or departure and routing instructions or any other breach of Vendor's obligations or if Vendor makes an assignment for the benefit of creditors, or if a receiver for its assets or business is appointed.

4. H-E-B's Right to Cancel Without Cause. H-E-B may cancel by notice to Vendor this Purchase Order in whole or in part at any time prior to shipment of the cancelled portion, in which case H-E-B shall not be liable to Vendor beyond the actual amount of Vendor's costs reasonably incurred in contemplation of performance of the cancelled portion less than any amount saved by Vendor as a result of such cancellation and less any amounts which could have reasonably been mitigated by Vendor.

5. Payment. H-E-B pays from invoice only and time for payment shall be deemed extended until the invoice is received, without loss of discount. Terms of payment will be considered from the later of the date of receipt of invoice or the date of receipt of goods directly by Purchaser at its place of business. See section 3.4 for Vendor Payment instructions.

6. Warranties.

a. Merchantability, Fitness, Conformance. Whether or not Vendor is a merchant of the kind of goods and/or services provided by it. Vendor warrants that all goods and/or services provided by it: (i) shall be of good quality and workmanship and free from defects latent or patent, in material or workmanship, (ii) shall conform in all respects to all specifications, performance standards, drawings, sample or descriptions, furnished, specified or adopted by H-E-B, (iii) shall be merchantable and suitable and sufficient and safe for purposes for which purchased or apparently intended if Vendor knows or reasonably should know of those purposes, and (iv) shall be free of any claim of any third party. These warranties are in addition to all other express warranties and shall run to the benefit of all shall create direct rights of enforcement and remedy in H-E-B. None of the remedies available to H-E-B for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by H-E-B in a separate agreement specifically designating such limitation and signed by an authorized representative of H-E-B. H-E-B's inspection and/or acceptance of and/or payment of goods and/or services shall not constitute a waiver by it of any warranties. H-E-B's approval of any sample of acceptance of any goods shall not relieve Vendor from responsibility to deliver goods and to perform services conforming in all respects to the sample.

b. Compliance.

1. Vendor represents that all merchandise delivered hereunder will have been manufactured in compliance with the Fair Labor Standards Act of 1938, as amended, and the regulations and ordered issued thereunder.
2. Vendor agrees that the labels on any wool products delivered hereunder, will be in conformance with the Wool Products Labeling Act of 1939, as amended, and all applicable regulations and standards and that the following guaranty will be placed on all invoices for such wool products: "We guarantee that the wool products listed on this invoice are not misbranded under the provisions of the Wool Products Labeling Act and rules and regulations thereunder."
3. Vendor represents that any merchandise or fabric furnished hereunder which is subject to flammability standards will have been manufactured in accordance with the Flammable Fabrics Act of 1953, as amended, and all applicable standards and regulations, and will guarantee such compliance on all invoices.
4. Vendor agrees that the labels on any textile fiber products other than wool products delivered hereunder, will be in conformance with the Textile Fiber Products Identification Act as amended, and all applicable regulations and standards and that the following guaranty will

be placed on all invoices for such textile fiber products: “ We guarantee that the fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provision of the Textile Fiber Products Identification Act and Regulations thereunder.

5. Vendor represents and warrants that all prices, benefits and allowances collected by or granted in consequence of the goods and/or services purchased hereunder are consistently made available by Vendor on a proportionally equal basis to all persons who are or may reasonably be expected to be in competition with H-E-B for the resale thereof.

6. Vendor represents and warrants that all merchandise delivered hereunder shall, if applicable meet the requirements of Federal Hazardous Substances Act and any regulations or standards thereunder.

7. Shipments by Vendor of any part of this Purchase Order constitutes a warranty and certification that the merchandise and services which are the subject matter of this Purchase Order and the production, sale, packaging, labeling, safety and transportation thereof and all warranties, guarantees, representations and advertising by Vendor made or authorized to be made in connection therewith are in all respects in compliance with all laws, ordinances, rules and regulations of all government bodies, departments and agencies having jurisdiction thereof and it is an express provision of this Purchase Order that Vendor will on request defend and in any event indemnify and save harmless H-E-B and its agents from and against any and all claims and determinations to the contrary and all costs and expenses reasonably incurred H-E-B in connection therewith, including legal expenses.

c. H-E-B's Warranties on Resale. These agreements and obligations of Vendor shall not be affected or limited in any way by Purchaser's extension of express or implied warranties its customers, except to the extent that any such Purchaser's warranties expressly extend beyond the scope of the Vendor's warranties, express or implied to H-E-B.

7. H-E-B's Inspection. H-E-B shall be under no obligation to unpack or inspect the merchandise before resale thereof. Vendor shall be responsible for the consequences of negligent manufacture and packaging and for the consequences of negligent handling prior to the point where H-E-B assumes ownership.

8. Patents, Proprietary Rights, Indemnification. H-E-B reserves the right at its option to return at Vendor's expense and full credit any goods and cancel this Purchase Order where a claim is made (whether founded or unfounded) that the purchase, display or sale by H-E-B infringes or invades any alleged patent, design, trade name, trademark, copyright, right of privacy any other tangible or intangible personal proprietary or property rights. Vendor agrees that it will, upon H-E-B's request, defend, and in any event, indemnify H-E-B and hold it harmless against any and all liability, claims, suits, actions, losses or expense, including costs and counsel fees, relating to or arising by virtue of any claim or any patent, design trademark, right of privacy or other similar actions, suit or proceeding now existing or hereafter commenced with respect to any or all goods covered by this Purchase Order whether or not H-E-B furnishes specifications.

9. Hold Harmless, Indemnification. Vendor agrees to indemnify, defend and hold H-E-B harmless from and against any and all liability, claims, suits, actions, losses, or cost of expenses, including costs and counsel fees relating to or arising by virtue of any claim or demand of any kind or nature which any buyer of such goods from H-E-B, or any other persons, including employees or agents of Vendor, whether in privity to H-E-B or not, may solely or in combination with another or others make against H-E-B based upon or arising from the purchase, sale or use of such goods or from any patent or hidden defects in the quality of such goods or the dangerous condition thereof, whether based on claim of breach of express or implied warranty or any other legal theory based on contract or tort law or if brought as a class action or not.

10. Remedies, Limitation.

a. In no instance shall H-E-B be liable to Vendor in excess of the actual Purchase Order cost less applicable discounts and/or other deductions and no interest or other charge shall be recognized or paid by H-E-B upon any such Purchase Order or resulting invoice whether claimed by reason of late payment or otherwise.

b. In addition to, and not by way of limitation or election of the remedies available to H-E-B under Uniform Commercial Code, it is specifically agreed:

1. H-E-B may return Vendor's expense any goods which are not as ordered, which do not comply with this Purchase Order or which are shipped earlier or later than the date specified for shipment.
2. Vendor agrees to refund the full purchase price, if then paid, and to accept the return at its expense and risk of all orders not delivered at the time specified, or not equivalent to the samples submitted or examined, or damaged, or not fit for sale, or differing from the amount ordered, or not conforming to all specifications, terms and provisions of this Purchase Order and to all warranties and guarantees set forth hereunder. Vendor shall pay to H-E-B all incidental and/or sequential damages suffered by H-E-B for any goods, returned by H-E-B or any goods not delivered by Vendor. It is specifically agreed that H-E-B shall be under no obligation to sell any goods for Vendor's account.
3. All shipments must be checked through the receiving dock designated on this Purchase Order. Failure to do so is a violation of this Purchase Order and subjects Vendor to cancellation of this Purchase Order at the option of H-E-B.
4. Vendor shall pay H-E-B a handling charge with respect to any merchandise that is received as an over shipment, was not ordered, is a Vendor substitution, is defective or deviates from order dates.
5. Vendor shall pay H-E-B the full price of all merchandise together with a handling charge for returns by H-E-B in accordance with these terms. At H-E-B's election, such payment will be in cash, or as a deduction against outstanding invoices. H-E-B shall not be obligated to take a credit against future purchases.
6. Full transportation changes due to split shipments, failure to comply with routing instructions or failure to ship specified designation(s) will be charged back including handling charges.

c. H-E-B's rights and remedies, whether existing by law or equity or arising from breach of warranty by Vendor or failure by Vendor to observe or perform any of the terms and conditions hereof, may not be abridged, modified or in any way limited or restricted by Vendor.

11. Confidentiality. Vendor shall not without first obtaining H-E-B's written consent disclose the fact that H-E-B has ordered the items covered by this Purchase Order, not except as required for Vendor's performance, disclose and of the details associated with the Purchase Order to any third party. Unless otherwise agreed in writing, no commercial or technical information disclosed or supplied by Vendor to H-E-B shall be deemed secret or confidential and Vendor shall have no rights against H-E-B with respect thereto except such rights as may exist under any applicable patent law.

12. Assignments. This Purchase Order and any right or obligation or performance hereunder are not assignable or delegable by Vendor without prior written consent of H-E-B, and any such attempted assignment or delegation shall be void and ineffective for all purposes. No invoices may be rendered by other than the named Vendor without H-E-B's written permission.

13. Changes to H-E-B's Order. H-E-B reserves the right at any time to make changes in this Purchase Order, including, without limitation, method of shipment or packing and time, place and manner of delivery, if such changes shall cause an increase or decrease in the cost of time required for performance of this Purchase Order, an equitable adjustment shall be made on the contract price and/or delivery schedule. Any claim by Vendor for such adjustment must be approved by H-E-B in writing before Vendor proceeds with such change. Price increases shall not be binding on H-E-B unless evidenced by a Purchase Order revision duly signed by H-E-B. Vendor shall make no changes to this Purchase Order without H-E-B's express prior written consent.

14. Discontinuance of H-E-B's Business. Discontinuance of or substantial interference with any part of H-E-B's business for any reason whatsoever shall give H-E-B the option of cancelling all or any part of the undelivered goods covered by this Purchase Order without liability in respect of the goods so cancelled.

15. APPLICABLE LAW. H-E-B AND VENDOR EXPRESSLY AGREE THAT ALL RIGHTS AND DUTIES UNDER THIS PURCHASE ORDER AND ANY CONTRACT ARISING THEREFROM SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

16. Arbitration. Any controversies or disputes arising out of, or relating to this Purchase Order or the interpretation or breach thereof, shall be settled by arbitration only if H-E-B has given its prior written consent to such arbitration. Any such arbitration shall take place in the City of San Antonio in accordance with the laws of the State of Texas or in any other mutually agreeable place in accordance with the laws of the state where the arbitration takes place. The Rules then obtaining of the American Arbitration Association shall apply in any arbitration and judgment upon the award rendered in such arbitration may be entered in any court having jurisdiction thereof.

17. Insurance. Vendor agrees to insure at its expense, any merchandise ordered pursuant hereto, for its full and true retail value, which by the terms of this Purchase Order is to be stored at other than H-E-B's warehouse. Vendor shall supply H-E-B with written evidence of such insurance coverage.

18. Invalidity/Non-Waiver/Course of Dealing. The invalidity in whole or in part of any condition of this purchase Order shall not affect the validity of the other conditions. The remedies herein reserved shall be cumulative and additional to any other remedies in law or in equity. No failure on the part of H-E-B to exercise, and no delay in exercising, and right hereunder will operate as a waiver thereof. No express waiver shall operate beyond the express terms thereof nor waive the same provision at any future date. H-E-B's right to require strict observance or performance of each of the terms and provisions hereof shall not be affected by concurrent waiver of any other terms or provisions or by any previous waiver forbearance or course of dealing.

19. Invoicing and Packaging.

a. Vendor shall show on each invoice:

1. H-E-B Order Number
2. Carton and Number of Cartons in the Shipment
3. Vendor Invoice Number
4. Warehouse Name
5. Vendor's Assigned Vendor Number
6. Identification of H-E-B as the buyer, identification of the seller and notation of when and where the merchandise was sold
7. A detailed description of the merchandise
8. The quantity of merchandise
9. The purchase price of each item
10. Itemization of all charges included in the price

11. Any rebates
12. Any goods or services provided by H-E-B to the seller that are used in the production of the imported merchandise
13. The invoice is to be written in English

- b. Vendor shall invoice H-E-B for each Purchase Order number separately at address indicated.
- c. Packing Memo must always accompany merchandise and must be detailed showing style, size, color, quantity, etc.
- d. On invoices for partial shipments Vendor shall write "Balance to Follow" or "Balance Cancelled". If "Back Order" merchandise is not shipped by completion date, it is automatically cancelled and returned at Vendor expense.
- e. When packing merchandise, Vendor shall follow sequence used on this Purchase Order. If two or more cartons are used, Vendor shall indicate the carton which contains the Packing Memo.

20. Shipping and Routing.

- a. Vendor shall follow shipping instructions shown on this Purchase Order or previous routing letter or shipment will be considered F.O.B. H-E-B's warehouses.
- b. If shipping by Railway Express, Air or Parcel Post Vendor shall insure for Full Value.
- c. Vendor shall show on the Bill of Lading:
 1. Purchase Order Number
 2. Carton Number and Number of Cartons in the Shipment.
 3. Vendor Invoice Number
 4. Name of carrier(s) and full routing to destination.
 5. Proper classification description and percent of fiber content so carrier will give proper rating.
 6. All shipments subject to released valuations, such as mugs, earthenware, toilet preparation, etc. are to be released at the lowest valuation produced for the specific commodity in the governing freight classification.
- d. Vendor shall have Bill of Lading signed by shipper and by carrier(s) and mail to address receiving the merchandise.
- e. Fabric content must be shown on the Bill of Lading or H-E-B will charge Vendor for the difference in the freight cost.

21. Taxes. Vendor shall set forth in writing any applicable sales or other taxes due from H-E-B on all invoices or bills, whether electronic or hardcopy, and shall timely submit to the appropriate taxing authority the full amount of any tax(es) collected from H-E-B. Invoices must indicate tax location and rate and tax amount.

22. Entire Agreement. The Purchase Order and any documents referred to on the Purchase Order constitute the entire agreement between the parties. The terms hereof can be added to or modified only by a document signed by an authorized agent of H-E-B.