

RE: ELECTRONICALLY TRANSMITTED PURCHASE ORDERS

Please be advised that until you are notified to the contrary in writing, the attached "Standard Terms and Conditions" shall be deemed to be a part of and incorporate by reference into any order from us received by you electronically.

TERMS AND CONDITIONS
CONTAINED ON KROGERS PURCHASE ORDER FORM 598-TCP

1. **ACCEPTANCE.** Acceptance of this Purchase Order may be made by Vendor's shipment of the goods described herein. In no event shall any acceptance or acknowledgement by Vendor which alters or adds to the terms and conditions hereof be effective and any such alteration or addition shall be deemed rejected unless expressly approved in writing by Purchaser. In no event shall Purchaser's receipt and use of the goods described herein be deemed to constitute acceptance of any term or condition different from or in addition to the terms and conditions set forth in this Purchase Order. Your invoice must agree in all details with this order, otherwise wire giving order number if instructions cannot be carried out in full.
2. **PAYMENT.** The cash discount period provided for herein shall date from Purchaser's receipt of the goods described herein or from the date of Vendor's invoice, whichever date is later.
3. **EXTRA CHARGES.** No additional charges of any kind, including charges for boxing, packing, cartage or other extras, will be allowed unless specifically agreed to in writing in advance by Purchaser.
4. **QUANTITIES.** Sorting of Merchandise. The specific quantity ordered must be delivered in full and not be changed without Purchaser's prior written consent. Any authorized quantity is subject to Purchaser's rejection and return at Vendor's expense. Shipper must certify on bill of lading that freight has been sorted or segregated according to sizes, brands or other distinguishing characteristics and so tendered to the carrier.
5. **RISK OF LOSS.** Unless otherwise specified by Purchaser, Vendor shall bear the risk of loss or damage to goods shipped hereunder until receipt of the goods by Purchaser. In the event of damage or loss, Purchaser will cooperate with Vendor in presenting any reasonable claim against the carrier.
6. **TIME.** Purchaser has schedule the goods purchase hereunder for use immediately upon receipt, making time of the essence with respect to this purchase. Vendor's Agent shall give Purchaser notice of the fir delivery date within 24 hours immediately prior to such delivery date. Purchase shall have the right to reject any goods which are not received in accordance with the delivery schedule hereof or which do not otherwise conform to the terms and conditions of this Purchase Order.
7. **PRICE.** The prices, discounts, allowance and terms made available to Purchaser herein shall be by Vendor made available or proportionate equal to all competitors of Purchaser. If during its performance hereunder, Vendor sells to any other customer goods of the type or quantity purchased hereunder on more favorable conditions or terms, including prices, Purchaser shall have the right, at its option, to have such more favorable conditions and terms applied to this transaction. If price is not stated in this order, it is agreed that the goods shall be billed at the price last quoted, or billed at that prevailing market price, whichever is lower. This Purchase Order must not be filled at a higher price than last quoted or charged without Purchaser's specific authorization.

8. **INSPECTION.** All goods shall be received subject to Purchaser's right of inspection and rejection. Defective goods or goods not in accordance with Purchaser's specifications will be held for Vendor's instruction at Vendor's risk and, if Vendor so directs, will be returned at Vendor's expense. If inspection discloses that part of the goods received are not in accordance with Purchaser's specification, Purchaser shall have the right to cancel any unshipped portion of the order. Payment for any goods encompassed by this Purchase Order prior to inspection shall not constitute acceptance thereof and is without prejudice to any and all claims that purchaser may have against Vendor.
9. **WARRANTIES.** Vendor expressly warrants that it will convey good title to the goods encompassed by this Purchase Order, free and clear of all liens, encumbrances and security interests, and that all the materials, articles or services encompassed by this Purchase Order or other description, representation or specification incorporated herein or on any sales representation of Vendor will be conveyed in exact accordance with such order, description or performance specification and will be free from all defects in material and/or workmanship, merchantable and commercially fit and sufficient of its intended use. The foregoing warranties shall survive delivery and shall not be deemed waived either by reason of Purchaser's acceptance of said material or articles or by payment for them. Any deviations from this Purchase Order or the specification furnished hereunder or any other exceptions or alterations shall be ineffective unless approved in writing by Purchaser. No attempt by Vendor to disclaim, exclude, limit or modify the warranties contained herein or Vendor's liability for direct or consequential damages shall be of any force or effect.
10. **FORCE MAJEURE.** Vendor shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including an act of God, war, insurrection, rebellion, riot, sabotage, labor dispute, explosion, fire, flood, storm, accident, drought, equipment failure, power failure, inability to obtain suitable and sufficient lab or material, delay or carriers, embargo, law, rule or regulation including, but not limited to, priority, requisition, allocation or price control, or other cause beyond its reasonable control. Similarity, Purchaser shall not be liable for failure to take delivery of the goods for any of the above causes beyond Purchaser's reasonable control. When only a part of Vendor's or Purchaser's capacity to perform is excused under this paragraph, Vendor or Purchaser must allocate production, deliveries, or receipt of deliveries among various customers or suppliers then under contract for similar goods during the period when Purchaser or Vendor is unable to perform. The allocation must be effected in a commercially fair and equitable manner. When Vendor claims an excuse for nonperformance under this paragraph, it must give written notice to purchase immediately after the event upon which nonperformance is predicated and specifying the reason for such nonperformance and the duration thereof. When all allocation has been made, notice the estimated quota made available for Purchaser or Vendor, as the case may be, must be give. Vendor shall not be obligated to sell, nor shall Purchaser be obligated to purchase, at a later date that portion of the goods which Vendor is unable to deliver or Purchaser's unable to receive or use because of any of the aforementioned causes beyond the control of the parties. No goods are to be tendered by Vendor after the expiration of the time specified herein without the consent of the Purchaser.
11. **CANCELLATION.** Appoint of a trustee, receiver or liquidator for all or a portion of Vendor's property; Vendor's commission of any act of bankruptcy; or Vendor's filing of a voluntary petition in bankruptcy, or Vendor's breach of any covenant or obligation hereunder or arising here from shall constitute an event of default entitling Purchaser to terminate this Purchase Order and to notify Vendor not to proceed with any further performance. In any of such events, Purchaser shall have no liability or obligation other than to pay for those goods already received and accepted.

12. **PRODUCT GUARANTEES.** The articles comprising each shipment or other delivery hereafter made to Purchaser by Vendor are hereby guaranteed as of the date of such shipment or delivery not adulterated or misbranded within the meaning of the Federal Food, Drug & Cosmetic Act or any amendment thereto, and furthermore, that they are not articles which may not under the provision of Section 4040 and 505 of the Federal Act, be introduced into interstate commerce. Vendor hereby guarantees that no article listed herein is misbranded within the meaning of the Federal Hazardous Substances Act. Vendor hereby guarantees that no article listed herein is a material, the sale of which is in violation of the Federal Flammable Fabrics Act or orders or regulations issued pursuant thereto. This guaranty is continuing and shall be in full force and effect until revoked in writing.
13. **APPLICABLE LAWS.** Vendor represents that the goods encompassed by this Purchase Order were not manufactured and are not being sold or priced in violation of any federal, state or local laws.
14. **INTERPRETATION AND AGREEMENT.** This contract shall be construed according to the laws of the State of Ohio and may not be assigned by Vendor without Purchaser's prior written consent.
15. **SEVERABILITY.** The provisions hereof are severable and, in the event any provision is held to be unenforceable, the remaining provisions will continue in full force and effect.
16. **ENTIRE AGREEMENT.** The terms and conditions of this Purchase Order may only be modified by written agreement of the Purchaser.