



## LOEHMANN'S ADDITIONAL PURCHASE ORDER TERMS AND CONDITIONS

The delivery or attempted delivery of all or any part of the merchandise ordered hereby shall be deemed an acceptance by Vendor of the following provisions and those on the face of this purchase order.

- (1) Vendor shall deliver to Purchaser the merchandise ordered herein in strict conformity with this purchase order, and if this be a sale by sample, in accordance with the approved sample in every detail. All workmanship
- (2) Each package shall be numbered and labeled with the Purchaser's order number (appearing on the face of this document), contents and weight and shall contain an itemized packing slip and shall be properly prepaid for shipment so as to secure lowest transportation and insurance rates and to meet carrier's requirements. No charges will be allowed Vendor for packing, breaking, freight, express or cartage unless stated herein.
- (3) In the event the merchandise ordered herein, or any part hereof, is (a) shipped prior to "ship not before" date, or after the "cancel if not shipped by" date, (b) delivered after the delivery date, if specified, (c) delivered in a quantity other than that ordered, (d) different in any way from the description thereof, the specifications therefore, or the approved sample thereof, (e) in violation of any representation, warranty, or guarantee given herein, or (f) otherwise not in strict conformity with the purchase order, then, in any such event, Purchaser shall have the unconditional right to cancel all or any part of this purchase-order and return all or part of the merchandise delivered hereunder at Vendor's sole cost, and expense, and Vendor shall forthwith refund to Purchaser any payment made on account of said purchase and reimburse Purchaser for all its costs in the inspection, handling, storage and shipping of said merchandise.
- (4) Delivery of the merchandise ordered herein shall not be deemed to have been made to Purchaser, and no liability shall be imposed or assumed by Purchaser, until and unless the merchandise ordered herein, in strict conformity with this purchase order, shall have been physically received by Purchaser at the premises designated herein for delivery and affirmatively accepted by Purchaser. Neither delay in inspecting merchandise until the merchandise reaches the place of use or resale nor the packaging or ticketing thereof shall be deemed acceptance by Purchaser.
- (5) Delivery of merchandise to a carrier, consigned to Purchaser, or to any warehouse, consolidator or expediter, unless designated by Purchaser as the place of delivery herein, shall under no circumstances constitute delivery to Purchaser. Purchaser shall not be liable for any merchandise lost, damaged, delayed or destroyed while in transit or while in the possession or custody of Vendor or of any carrier, warehouseman, consolidator or
- (6) No action shall be commenced against Purchaser for breach of this contract, nor may any counterclaim or set-off be interposed by reason thereof, including, without limitation, for monies due or to become due hereunder, or for the amount of any discounts, allowances or other deductions from remittances made on account of merchandise purchased hereunder, or disputing Purchaser's right to return all or part of the merchandise
- (7) In the event Purchaser (a) determines or suspects the existence of a defect or deficiency in the merchandise herein which may result in a risk of personal injury or property damage to Purchaser or to Purchaser's customers, or (b) receives notice, or reasonably believes that the merchandise herein, in any respect, violates any law, rule or regulation of any competent authority or (c) receives notice, or reasonably believes, that the merchandise herein, in any respect, infringes upon any patent, copyright, trademark, or that Vendor or Purchaser is claimed to be unfairly competing as a result of the sale thereof, then, in any such event, Purchaser shall have the unconditional right to return any part of the merchandise delivered hereunder at Vendor's sole cost and expense, and Vendor shall forthwith refund to Purchaser any payment made on account of said purchase and reimburse Purchaser for all its cost in the inspection, handling, storage and shipping of said merchandise.
- (8) If on the ship date the prevailing price of any item purchased hereby or discount granted or other terms of sale is more favorable to Purchaser than the terms set forth herein, the Purchaser shall be granted such more
- (9) Vendor represents and warrants and guarantees to Purchaser, that the merchandise ordered herein, wherein delivered, shall be merchantable and fit for the purposes for which the same is intended to be used by Purchaser and Purchaser's customers, and that said merchandise, and the distribution and packaging thereof, comply with all laws, rules and regulations of the United States (including without limitation the Consumer Product Safety Improvement Act), the states and municipalities where such goods are manufactured or are to be offered for sale (including without limitation California's Safe Drinking Water and Toxic Enforcement Act of 1986 (known as Proposition 65), and California's Lead-Containing Jewelry Law) and the administrative agencies thereof relating to wages and hours, discrimination, labeling, packaging, safety, use, identification or otherwise, and that said merchandise does not violate the copyright, trademark, trade secret or other proprietary right of any person under laws of any jurisdiction whatsoever.  
  
As to Proposition 65 and California's Lead-Containing Jewelry Law specifically, Vendor hereby certifies that the merchandise ordered herein is compliant with these laws and said merchandise does not and will not contain chemicals (including without limitation lead) or other components that would prohibit or make unlawful the sale or offer for sale of said merchandise under Proposition 65 or California's Lead-Containing Jewelry Law. In addition, Vendor further certifies that the merchandise ordered herein does not require any warning labels other than those affixed to said merchandise.
- (10) Vendor shall submit to Purchaser a continuing guarantee applicable to wool, textile fiber and fur products sold to or to be sold to Purchaser in a form prescribed by and filed with the Federal Trade Commission sufficient to relieve Purchaser of liability under each Act administered by the Federal Trade Commission applicable thereto, or, in the alternative, a separate guarantee placed on all invoices that no wool, textile fiber or fur product sold hereunder is misbranded or falsely labeled within the meaning of any said Acts.

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(11) Vendor shall submit to Purchaser a continuing guarantee applicable to all fabric, sold or to be sold to Purchaser in a form prescribed by and filed with the Federal Trade Commission sufficient to relieve Purchaser, of liability under said Act, or, in the alternative, a separate guarantee placed on all invoices that reasonable and representative tests made under the procedures provided in the Flammable Fabrics Act, as amended, show that the said fabric is not so highly flammable as to be dangerous.

(12) Payment terms of Vendor's invoice relate to the actual receipt date of the shipment in Purchaser's designated warehouse. Shipments received on the 20th of a month (or later) will be considered as received as of the 1st of the following month and will be subject to our usual terms and discount. This order is subject to anticipation for prepayment.

The price(s) set forth on the face of this purchase order (the "Quoted Price(s)") include all taxes, duties paid or payable in the country of origin, boxing, packing, cartage and other charges and shall in no event be increased without the express prior written consent of a duly authorized representative of Purchaser. If any Quoted Price is incorrect, Vendor must immediately notify Purchaser in writing before processing any goods. If Vendor delivers any of the goods ordered hereunder, or otherwise processes any part of this purchase order, it thereby waives any right to claim any price(s) different from the Quoted Price(s). If prices are omitted from this purchase order, the goods will be billed at prices not higher than last quoted or charged by the Vendor to a similarly situated customer, or prevailing market prices, whichever is lower. Vendor agrees that if at any time during the pendency of this purchase order lower net prices are quoted to anyone for similar goods, such lower prices shall be from that time substituted for the Quoted Price(s). For the three (3) month period commencing with the date of this purchase order, Purchaser shall have the right to purchase additional goods at the Quoted Price(s).

(13) Vendor agrees to appear, defend, through counsel reasonably satisfactory to Purchaser, indemnify and hold harmless Purchaser, its successors, assigns, customers and users of its products, from and against any and all actions, litigation, claims liabilities, loss damages (whether indirect, incidental, consequential or otherwise), expenses or costs, including attorney's fees, which may arise out of, relate to or be connected in any way with the resale and/or use, including misuse, of the merchandise covered by this order resulting from the breach of any covenant, representation or warranty made by Vendor in connection with such merchandise, including without limitation, liability based upon death or injury to any person or damage to property resulting or arising or alleged to result or arise from or out of (1) the resale and/or use of such merchandise, and (2) the demonstration or delivery to Purchaser or Purchaser's customers of such merchandise by employees or agents of the Vendor.

Vendor shall furnish Purchaser with a certificate of products liability insurance with limits of no less than \$1,000,000 for bodily injury and property damage per occurrence (\$10,000,000 annual aggregate) containing a Broad Form Vendors endorsement adding Purchaser as additional insured and a provision that the insurance company will not cancel, reduce or materially change the policy without giving at least 30 days prior written notice to Purchaser.

(14) In the event any place or business or other premises of the Purchaser shall be closed or the use by Purchaser thereof limited by government order, strike, fire or other casualty, riot accident or other cause beyond the control of Purchaser and said closing or limitation of use shall adversely affect the ability of Purchaser to accept delivery of the merchandise ordered herein, or to distribute said merchandise at retail at the place intended for such sale at time of issuance of this purchase order, Purchaser shall have the right to cancel all or any part of this purchase order relating to merchandise, the acceptance, distribution or sale of which is so affected, provided the merchandise has not been shipped to Purchaser.

(15) Vendor shall not have the right to assign this purchase order or the proceeds thereof, or any part thereof, without Purchaser's written consent. In the event of claims arising from any such assignment, Purchaser may, in

(16) The waiver by Purchaser of any of the terms hereof shall not be deemed a continuing waiver, and all of the terms and conditions shall continue in full force and effect.

(17) If, in the event of market price changes or the discontinuance of the retail sale of any item ordered, Purchaser no longer desires to take delivery of all or any part of the merchandise ordered, Purchaser shall have the right

(18) This purchase order may not be canceled nor may its terms be modified, amended, or waived except by written instrument executed by an officer of the party against whom said termination, modification, amendment or waiver is sought to be enforced. All negotiations, discussions and oral agreements between Vendor and Purchaser prior to execution of this order or contemporaneously therewith are superseded by and deemed merged into this

(19) No rules, regulations or agreements of any trade association or non-governmental bureau, nor any so-called trade custom, usage or practice shall vary, affect or be applicable to this agreement.

(20) This purchase order and all the terms and conditions hereof shall be governed by and construed according to the laws of the State of New York.