

TERMS AND CONDITIONS

(1) **Acceptance.** This Order invites acceptance either by express acceptance of this Order without exception or by the commencement of work to produce the goods or services requested in the Order. No other form or manner of acceptance shall be binding on Buyer. No additional or different terms proposed by Seller will be binding on Buyer unless they are assented to in writing by an authorized representative of Buyer.

(2) **Advertising.** Seller shall not publish the fact that it has contracted to furnish Buyer with the goods or services subject to this Order, nor disclose any details in connection with this Order to any person or firm without the prior written consent of Buyer.

(3) **Assignment.** Seller agrees that prior to full performance no assignment of this Order or the obligations of Seller hereunder, in whole or part, may be made without prior written consent of Buyer. In the event of agreed assignment, Seller shall continue to be liable with respect to all of the obligations or liabilities assumed by it hereunder and hereby guarantees full performance of this Order by its assignee or subcontractor. Buyer reserves the right to assign its rights and obligations under this Order in whole or in part. This Order shall be binding upon and inure to the benefit of lawful successors and assigns of the parties.

(4) **Buyer's Property.** All dies, molds, patterns, jigs, fixtures, drawings, specifications, technical information and other intangible property rights, and any other property that are either furnished to Seller or paid for by Buyer in connection with this Order, shall be and remain the property of Buyer, its subsidiaries or affiliates, be subject to return or delivery to Buyer at Seller's cost upon completion of the Order or at Buyer's instructions, be used only in filling orders from Buyer, be marked property of Buyer, its subsidiaries or affiliates, be held at Seller's risk and be returned to Buyer in good condition, and be maintained free of any security interest, lien or encumbrance.

(5) **Compliance with Laws and Standards.** In performing under this Order, Seller shall comply with all applicable federal, state and local laws, regulations, orders and generally accepted industry standards applicable to the production, sale and delivery of the goods purchased under this Order or the employment of personnel providing services to Buyer, as well as Buyer's Global Manufacturing Principles posted on Buyer's website. Seller shall, at its own expense, obtain, and maintain in full force and effect throughout the continuance of this Order, all licenses, permits, approvals and other governmental authorizations required under applicable laws for its performance under this Order. This compliance obligation shall extend to all goods, services, components and other deliverables. In addition, Seller specifically represents and warrants that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental disability or veteran disability or status. Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin, physical or mental disability or veteran disability or status. Such action shall include, but not be limited to the following: recruitment, advertising, and job application procedures; hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring; rates of pay or any other form of compensation and changes in compensation; job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists; leaves of absence, sick leave, or any other leave; fringe benefits available by virtue of employment, whether or not administered by the contractor; selection and financial support for training, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; activities sponsored by the contractor including social or recreational programs; and any other term, condition, or privilege of employment.

(6) **Delivery.** Time is of the essence in the performance of this Order. If Seller fails to make delivery in accordance with the Delivery Schedule set forth on the face of this Order, Buyer may cancel this Order and exercise the rights set forth in Paragraph 19. Seller agrees to notify Buyer in writing immediately if at any time it appears that the Delivery Schedule might not be met. Such written notification shall include the reasons for any possible delays, steps being taken to remedy any such problems, and a proposed revised Delivery Schedule. Buyer shall have the option at any time or times before shipment by Seller or the completion of services to change the place or time for delivery, the method of shipment or packing and, if multiple lots are indicated, or the quantity of individual lots. Seller shall have the rights specified in Paragraph 8 upon any change by Buyer. If the goods are delivered to a warehouseman or bailee, Seller shall make prior tender to Buyer of proper documents of title covering same or obtain the prior warehouseman's or bailee's acknowledgment of Buyer's rights in the goods. Seller shall not deliver "C. O. D." or otherwise require Buyer's payment upon presentation without Buyer's prior written consent, and deliveries sent in this manner will not be accepted and will be at Seller's risk. Buyer may accept and retain goods received up to 30 days in advance of stipulated delivery date, but reserves the right to reject and return them to Seller at Seller's risk and expense. If retained, time for payments and discounts shall be based upon the Delivery Schedule dates. All references to "goods" above shall also extend to services and related deliverables in the case of an Order for

services.

(7) **Confidential Information.** During Seller's performance under this Order and thereafter, Seller agrees not to directly or indirectly disclose or make available to any third parties any material, information or data concerning any aspect of Buyer, its subsidiaries or affiliates' business that is marked as confidential, or which Seller knows or has reason to know, by the nature or circumstances surrounding the disclosure, should be treated as confidential, including, without limitation, material, information or data concerning Buyer, its subsidiaries or affiliates' customers, personnel, product designs or specifications, product development plans, models, samples and mock-ups, marketing and advertising plans, purchase plans, research, reports or contracts, whether in written, visual, oral, electronic, web-based, or other form, whether provided by Buyer or its representatives, whether owned by Buyer, its subsidiaries or licensees, licensors, or suppliers, and whether or not supplied to Seller or paid for by Buyer or its affiliates ("Buyer's Confidential Information"). As between the parties, Buyer's Confidential Information shall be and remain Buyer's property. Seller also agrees that Buyer's Confidential Information shall not be reproduced or used by Seller for any purpose other than the fulfillment of this Order without Buyer's prior consent, and shall be returned, together with all copies, promptly to Buyer upon completion of this Order or earlier upon demand. Seller may only disclose, to the extent necessary, Buyer's Confidential Information i) to its employees and agents who require access to Buyer's Confidential Information in order to fulfill this Order and who are bound in writing by the obligations of this Paragraph 7; or ii) as required to be disclosed under any applicable law, regulation or governmental order of any country provided, however, that Seller shall give prior written notice to Buyer of such legal disclosure requirement so that Buyer can take appropriate action to protect the confidentiality, and prevent the unauthorized use or appropriation of such of the Buyer's Confidential Information..

(8) **Changes.** Buyer shall have the right at any time to make changes in the drawings, designs, specifications, quantities, delivery schedules, methods of shipment or packaging and place of inspection, acceptance and/or point of delivery of any goods or services subject to this Order. If such changes result in delay or an increase in expense to Seller, Seller shall notify Buyer immediately and negotiate an equitable adjustment provided, however, that Seller shall, in all events, proceed diligently to supply the goods or services contracted for under this Order as so changed. No claim by Seller with respect to a change shall be valid unless submitted to Buyer in writing within 10 days from the date of such change notice, accompanied by an estimate of charges resulting from such change, and such change in price or other elements was accepted by Buyer in writing.

(9) **Gratuities.** Seller warrants that no gratuities, concessions or other things of value have been or will be directly or indirectly offered, authorized, or given to any employee or agent of Buyer (even at the direction of any officer or other employee of Buyer) or to any government official (including any employee of a state-owned or state-controlled entities or any immediate relative of a government official) in connection with or as an inducement to the awarding of this Order or to obtain or retain business. Seller also warrants that Buyer may terminate the right of Seller to proceed under this Order if Buyer has cause to believe that this provision has been violated or if gratuities, concessions in the form of entertainment gifts or otherwise or other things of value were offered or given by Seller, or any employee or agent of Seller, to a government official or to or at the direction of any employee or agent of Buyer with a view toward securing this Order or securing favorable terms with respect to this Order.

(10) **Grounds for Insecurity.** Buyer shall have the right to invoke the cancellation remedies provided in Paragraph 19 in the event of any one or more of the following: (a) insolvency of Seller; (b) Seller's inability to pay its debts as they become due; (c) Seller's filing of a voluntary petition in bankruptcy; (d) the filing of an involuntary petition to have Seller declared bankrupt, provided it is not vacated within 30 days from the filing date; (e) the appointment of a receiver or trustee for Seller, provided such an appointment is not vacated within 30 days from the date of the appointment; (f) the execution by Seller of an assignment for the benefit of creditors; or (g) Seller's inability to obtain labor or materials. Buyer may require a financial statement from Seller at any time during the term of this Order for the purpose of determining Seller's ability to perform. The remedies provided in this paragraph are not exclusive, and are in addition to those provided at law or in equity, including the right to suspend performance in the event of reasonable grounds for insecurity.

(11) **Inspection and Rejection.** Goods, services and related deliverables hereunder are subject to review and inspection and approval at any reasonable places and times, and in any reasonable manner, including inspection at Seller's plant during and after manufacture, and at Buyer's plant or any other point of destination specified on the face of this Order. Notwithstanding any prior inspection, failure to inspect or payment, Buyer reserves the right to reject and refuse acceptance of goods or services at any time if Buyer finds that any of the goods or deliverables ordered: (i) are not in conformity with the requirements of the Order, including without limitation Paragraphs 5 and 22 hereof, (ii) are denied or restricted entry into the country or region where the Buyer is located or such other places designated by the Buyer for any reason; or (iii) are recalled.

(12) **On-Site Services.** If this Order requires Seller to furnish services on Buyer's premises such as installation, Seller shall indemnify Buyer against any claims of personal injury or property damage claimed to be suffered by employees or agents of Seller on Buyer's premises, except to the extent such loss or damage is shown to be directly caused by the negligence or willful misconduct of Buyer, its employees or agents.

(13) **Packing and Shipping.** Seller shall provide complete and accurate information to the designated carrier at least 24 hours (or such period requested by the Buyer) prior to the loading of the goods to enable the carrier to accurately and timely complete all necessary customs declarations. No charges will be allowed for boxing, wrapping, cartage or storage unless so specified on the face of this Order. Seller shall pack or otherwise prepare all goods for shipment so as to secure the lowest transportation rates consistent with delivery requirements, meeting requirements of carriers and safeguarding against damage from weather, transportation and storage. Seller shall mark the number of this Order on each case or parcel delivered. On the date shipment is made, Seller shall mail to Buyer shipping documents and a copy of the packing slip bearing Buyer's Order number, part number, and quantities shipped. Buyer's count will be accepted as conclusive on shipments not accompanied by a packing slip. Seller shall furnish Buyer invoices in duplicate. When containers or packing material are furnished by Buyer, Seller agrees to package materials in quantities and carton sizes as specified by Buyer.

(14) **Patent, Copyright and Trademark Rights.** Payment for goods, components and other deliverables includes payment in full for all intangible property rights utilized therein or arising from Seller's performance, including without limitation patents, copyrights, trade secrets and trademarks. To the extent that any goods or materials delivered to the Buyer incorporate creative services, Seller agrees that such deliverables shall constitute commissioned works and all rights (including without limitation patents, copyrights, trade secrets and trademarks) attached to such deliverables shall be owned by the Buyer. Seller shall obtain from its employees (including former employees) and agents an assignment, for its benefit, of all their intellectual property and proprietary rights in all works and materials ordered by Buyer. Notwithstanding any other provision of this Order Seller hereby irrevocably assigns to Buyer any and all of Seller's right, title and interest including all intellectual property and proprietary rights arising from or relating to all such works and materials. In addition, Seller shall obtain from all authors of such works and materials a waiver of all moral rights or similar rights that such authors may have in the works and materials. Seller shall cooperate with Buyer and execute all documents necessary or appropriate for securing or perfecting Buyer's rights hereunder.

(15) **Payment Terms.** Unless otherwise stated on the face of this Order, invoices will be paid by, or discount periods (if applicable) will commence 60 days after the latter of: (a) the date of Buyer's acceptance (in accordance with Paragraph 11 of all goods or other deliverables); (b) the date of Buyer's receipt of a correct invoice for all goods or other deliverables, prepared in accordance with the terms of this Order; or (c) the date of the invoice, if postdated.

(16) **Prices.** The price for goods covered by this Order shall be the lower of either the price shown on the face of this Order or the price of Seller in effect on the date of delivery to customers in the same class as Buyer for like quantities of goods of like grade and quantity.

(17) **Taxes.** Unless otherwise required by applicable laws, the price of the goods and services covered by this Order shall include all taxes or charges imposed with respect to the manufacture and sale of the goods or the performance of services. To the extent that any taxes or charges are required to be borne by the Buyer, Seller shall separately state on its invoices the amount of such taxes applicable to the goods or services covered by this Order.

(18) **Termination Without Cause.** Buyer may terminate all or any part of this Order (including any further installments or shipments) at any time without cause by written notice to Seller. In the event such notice is not submitted pursuant to Paragraph 19, Seller may within 30 days of the effective date of termination submit a termination claim to Buyer for reasonable and necessary out-of-pocket costs and expenses not previously paid for by Buyer for performance of the Order up to the date of notice of termination. The termination claim may not include future commitments of Seller under any subcontracts or orders, unless such commitments or orders were previously assented to by an authorized representative of Buyer in writing. In no event shall the Buyer be responsible for Seller's overhead or anticipated profit. Buyer reserves the right to approve the reasonableness of Seller's termination claim.. The provisions of this paragraph shall not limit or affect the right of Buyer to cancel this Order for cause and shall not apply to a cancellation with cause.

(19) **Cancellation With Cause.** If Seller fails to make delivery in accordance with the Delivery Schedule, or otherwise fails to observe or comply with any of the other terms, conditions, or warranties set forth in this Order, or fails to make progress so as to endanger performance thereof, or, in the event of any grounds for insecurity in relation to Seller's performance as detailed in Paragraph 10 Buyer may cancel this Order as to goods not yet shipped or services not performed by written notice to Seller. In such event when goods are rejected, Buyer shall have no liability to Seller on account thereof, and may purchase or produce substitute goods on such terms or in such manner as it

may deem appropriate in the exercise of commercially reasonable judgment, any excess costs or other expenses incurred by Buyer to be charged to Seller. In lieu of the foregoing where goods or services are delivered but rejected, by notice given to Seller, Buyer shall have the right to require that the Seller promptly produce and deliver substitute goods or services that conform to all requirements of this Order. All remedies described herein shall be in addition to all other remedies, at law or in equity, including without limitation, specific performance.

(20) **Title and Risk of Loss.** Except as otherwise expressly provided herein, Seller and Buyer agree that title to, and risk of loss on, all goods and other deliverables to Buyer shall pass to Buyer upon delivery to Buyer at the F.O.B. point designated on the face of this Order. In the event the goods or other deliverables are rejected by Buyer or upon revocation of Buyer's acceptance for whatever reason, title and risk of loss shall be treated as having remained in Seller from the beginning of Seller's performance.

(21) **Waiver.** No waiver by the Buyer shall be valid unless in writing and signed by the Buyer. The failure or delay of Buyer in any one or more instances (a) to insist upon performance of any of the terms or conditions of this Order, or (b) to exercise any right or privilege in this Order, shall not be construed as a waiver of any such terms, conditions, rights or privileges. The acceptance of a nonconforming installment is not a waiver of any breach as to that installment or of the Order as a whole. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

(22) **Representations, Warranties and Covenants.** Seller represents, warrants and covenants that the goods and all related components and deliverables provided to the Buyer under this Order, whether manufactured by Seller or by others shall: (a) be merchantable; (b) strictly conform to the description of the goods on the face of this Order or materials provided by Seller; (c) strictly conform to specifications (including Quality, Safety and Operating Procedures and performance specifications), drawings, models and approved samples, if any, made a part of this Order; (d) be free from defects in workmanship; (e) comply with all applicable federal, state and local laws and regulations, including without limitation those concerning health, safety and environmental standards and requirements; (f) not contain or be manufactured using ozone depleting substances; (g) be safe and fit for the particular purpose(s) for which the goods are required by Buyer or intended or expected to be used by the ultimate consumer; and (h) except with respect to any materials provided by Buyer for incorporation into the goods or other deliverables to Buyer, not infringe or misappropriate the trademarks, copyrights, patents, trade secrets or other intellectual property rights of any third party. Seller also warrants that it has and will have upon delivery the right to transfer good title to the goods, components and deliverables subject to this Order, free from all security interests, liens and encumbrances. The foregoing warranties shall also apply to services to the extent applicable. These warranties shall be in addition to any other warranties, express or implied. All warranties shall run to Buyer and its customers. The warranties expressed herein shall be construed as consistent and cumulative with one another and with all warranties implied by law.

(23) **Indemnity.** Seller shall defend, indemnify and hold harmless Buyer, its subsidiaries and affiliates, and their respective directors, officers, shareholders, employees, agents and customers ("Indemnitees"), from and against any and all claims, losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees) directly or indirectly caused by or arising from in whole or in part: (a) any act or omission of Seller, its agents or employees; (b) the sale, distribution or use of any goods or services covered by this Order, unless such claim or loss resulted from compliance with Buyer's specifications; or (c) any breach of any warranty or other provision of this Order by Seller, its agents or employees. Buyer shall have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against the Indemnitees.

(24) **Insurance.** Seller shall maintain, at Seller's sole expense and while this Order is in effect and for a period of one year thereafter, the following insurance: Workers' Compensation as required by any applicable law or regulation relating to Seller's employees; Employer's Liability with limits of not less than US\$2,000,000 per accident; Commercial General Liability ("CGL") with limits of not less than US\$2,000,000 per occurrence; Business Automobile Liability with limits of not less than US\$2,000,000 combined single limit each accident; Commercial Property covering all of Buyer's property in Seller's possession on a replacement cost basis. Buyer shall be added as an additional insured on Seller's CGL insurance and as loss payee on Seller's Commercial Property Insurance. Certificates of Insurance evidencing such coverage shall be provided to Buyer at the time this Order is signed or within a reasonable time thereafter, and copies of policies shall be furnished to Buyer on request. These insurance requirements do not limit any other obligations of Seller under this Order, including but not limited to Seller's indemnity obligations.

(25) **Validity.** The invalidity, illegality or unenforceability in whole or in part of any term or condition of this Order shall not affect the validity, legality or enforceability of the remainder of this Order, which shall be deemed severable.

(26) **Notices.** All notices required to be sent under this Order to Buyer shall be sent by certified or registered mail, as applicable, return receipt requested, to Buyer's address as printed on the face hereof with a copy to [Mattel, Inc., attention Law Department, 333 Continental Blvd., El Segundo, CA 90245]. Any notice required to be sent to Seller

shall be sufficient if mailed to Seller's address as listed on the face hereof.

(27) **Integration.** This Order together with all attachments made a part of this Order represents the entire agreement and understanding of Buyer and Seller with respect to this Order and shall supersede all prior and contemporaneous agreements between the parties.

(28) **Set-Off.** Buyer shall be entitled at all times to setoff any amount owing from Seller to Buyer or any of its affiliated companies against any amount due or owing to Seller with respect to this Order.

(29) **Data Requirements.** Seller agrees at no charge to furnish data called for by this Order and any other data requested by Buyer that relates to the goods or services subject to this Order.

(30) **Audit and Inspection.** Seller agrees to keep accurate books of account and records covering all transactions relating to this Order, and Buyer and its duly authorized representatives shall have the right during normal business hours to examine said books of account and records and all other documents and materials in the possession of or under the control of Seller with respect to the goods and services covered by this Order, and shall have free and full access thereto for said purposes and for the purpose of making extracts therefrom. All such books of account and records pertaining to the goods or their manufacture shall be kept available for at least three (3) years after completion or termination of this Order. Seller shall make available to Buyer's inspectors copies of all of Seller's documentation that is applicable to the goods and services related to this Order.

(31) **Governing Laws/Jurisdiction.** This Order is made by Buyer and accepted by Seller with reference to, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the laws of Hong Kong Special Administrative Region of the People's Republic of China. Seller agrees that any action or proceeding relating to this Order will be filed and prosecuted only in the courts of Hong Kong and consents to and waives any objections to personal jurisdiction and venue in such courts.