



## MARIANNA INDUSTRIES, INC TERMS AND CONDITIONS

### 1. GENERAL

All sales and deliveries of all Items by Vendor to MARIANNA INDUSTRIES, INC. ("MARIANNA") and all Purchase Orders by MARIANNA to Vendor, will be covered by and subject to these terms and conditions. Inconsistent terms contained in any quotation, confirmation, shipping invoice, bill of lading or similar document are superseded by the terms hereof.

These terms and conditions are not a Purchase Order and do not impose an obligation upon MARIANNA or its affiliates to purchase any Items from Vendor.

The relationship between MARIANNA and Vendor is that of an independent contractor. Vendor agrees that it has not and shall not hold itself out as, nor shall Vendor be deemed to be, an agent of MARIANNA. Further, this Agreement does not create an exclusive relationship between Vendor and MARIANNA or its affiliates.

For purposes hereof, "Purchase Order" means the purchase order issued by MARIANNA to Vendor that sets forth MARIANNA's order of Items, along with , all paper or electronic documents incorporated by reference under the Purchase Order, these Terms and Conditions, and any confidentiality, nondisclosure or similar agreement executed by MARIANNA and Vendor, and all exhibits and amendments to all such documents. "Vendor" means the party identified as the vendor or seller in the Purchase Order. "Items" mean the goods or services to be provided or performed by Vendor under the Purchase Order. "Purchase Price" means the amount to be paid by MARIANNA to Vendor under the Purchase Order for the Items.

### 2. ITEMS

In addition to the other provisions set forth in these Terms and Conditions, all Items received by MARIANNA must comply with MARIANNA's quality standards and be in saleable condition. All Items are subject to quality assurance and specification review by MARIANNA or third party audit at any time by MARIANNA at the expense of the Vendor unless the Vendor can supply third party certification.

If any Items fail to adhere to any of MARIANNA's quality standards, MARIANNA may refuse delivery without payment and the Items will be shipped back to Vendor at Vendor's expense. Unacceptable Items can include, but are not limited to:

- Items not precisely conforming to specifications
- Damaged packaging / product due to improper preparing, storage and/or shipping
- Items received that are short-dated or have exceeded their freshness date / shelf life
- Incorrect Items shipped to MARIANNA
- Inaccurate, missing or unscannable UPC or EAN codes
- Inaccurate or missing labeling
- Non-compliance with any State or Federal regulation

### 3. INTELLECTUAL PROPERTY; PRIVATE LABEL ITEMS

Vendor releases and shall indemnify and hold harmless MARIANNA, its customers, contractors and agents from any and all claims for infringement of any patent, copyright or trademark, trade secret, or other form of intellectual property, whether or not registered, by reason of the design, manufacture, purchase, use or sale of the Items and shall indemnify MARIANNA for all costs, expenses, judgments, liability and damages, including attorneys' fees, which MARIANNA may incur or have rendered against it by reason of any alleged infringement. MARIANNA reserves the right to be represented in any infringement proceeding without relieving Vendor of any of its obligations hereunder. In the event an injunction is obtained against use of the Items, Vendor shall do any or all of the following requested by MARIANNA: (a) procure for MARIANNA the right to continue using the Items; (b) replace the Items with equivalent or better non-infringing Items; (c) modify the Items, so that they become non- infringing, provided such Items perform in an equivalent or better manner in all respects.

A MARIANNA Private Label Item bears the MARIANNA logo and may be developed by Vendor in conjunction with MARIANNA. Vendor cannot replicate any or all material features of a MARIANNA Private Label Item for any other party such that both MARIANNA and the other party are selling or offering to sell Items which are confusingly similar to the other. And in no event can Vendor use, duplicate, or otherwise infringe any of the patents, trademarks, copyrights, trade dress or other MARIANNA intellectual property used by Vendor in creation of the Private Label Item for any purpose.

### 4. CATALOG AND WEBSITE ITEMS

In the event MARIANNA includes Items in MARIANNA's website and/or catalog, MARIANNA may require a placement fee.

## **5. PURCHASE ORDERS**

Vendor may ship only against a MARIANNA issued Purchase Order. Purchase Order shall be considered an acceptance of any offer to sell by Vendor. MARIANNA objects to any contrary term contained in any other document issued by Vendor regarding Items set forth in a Purchase Order. Any terms and conditions in any acknowledgement, terms and conditions, invoice or other paper or electronic document issued by either Vendor or MARIANNA with regard to the Items are superseded by these Terms and Conditions. By shipping goods or performing services after receipt of a Purchase Order, Vendor shall conclusively be deemed to be bound by these Terms and Conditions and all other provisions of the Purchase Order. No course of prior dealings between the parties or any trade usage shall be used or considered to supplement or explain any term used herein.

Purchase Orders are to be acknowledged upon receipt by the Vendor. Acknowledgement of the Purchase Order, Items, Item Quantities, Pricing, Delivery Date, and Shipment Tracking details should be confirmed to: MARIANNA INDUSTRIES, INC. PURCHASING, 11222 "I" Street, Omaha, NE 68137, Phone: 402.593.0211 Fax:402.537.9266.

Shipped Item quantities that exceed the amount requested on MARIANNA's Purchase Order will not be accepted. MARIANNA may opt to retain the excess Items at the per unit cost indicated on the original Purchase Order. MARIANNA may also opt to return the Items to Vendor via freight collect, and Vendor agrees to accept the returned excess items on such terms. Product can also be disposed of by MARIANNA at Vendor's request, but MARIANNA will not pay for the wasted product. Under no circumstances is it MARIANNA's responsibility to find an avenue of sale for the excess Items except in MARIANNA's sole discretion to keep and sell such Items.

MARIANNA reserves the right to cancel any outstanding Purchase Orders in the event the Vendor violates any terms of the Vendor Agreement.

## **6. PRICING & PAYMENT TERMS**

The purchase price shall be as stated in the Purchase Order, provided that if there is no price stated in the Purchase Order the purchase price shall not be higher than the price last charged or quoted to MARIANNA for such Items. Pricing, and discounts which are agreed upon, will continue to apply for at least one year from the date of the first purchase order. Pricing discounts, promotional allowances and/or sampling allowances may not be increased during this one year period without the signed approval of MARIANNA. Any increase in price requires 90 day written notice emailed to MARIANNA's Purchasing Office.

Invoice payment terms begin with the date of the receipt of Items by MARIANNA. Unless otherwise indicated, MARIANNA's payment terms are 2% discount if payment by MARIANNA is made within 15 days, or net 60 days payment. Unless requested, any shipment received more than one week prior to MARIANNA's "Deliver By" date stated on the Purchase Order, the invoice will be paid based on that stated "Deliver By" date.

All invoices must have a valid MARIANNA purchase order number on the face of the invoice. Deductions not challenged within 60 days from payment date will be deemed accepted by Vendor. Outstanding invoices not brought to MARIANNA's attention within six (6) months of the delivery date will not be considered for payment. Address for accounting correspondence: MARIANNA INDUSTRIES, INC. Accounting, 11222 "I" Street, Omaha, NE 68137.

## **7. DELIVERY; TAXES**

Vendor shall deliver the Items to MARIANNA on the date(s) indicated in the Purchase Order. If Vendor anticipates that it will not deliver the Items on the date(s) indicated, Vendor shall immediately notify MARIANNA by electronic transmission and overnight delivery of the anticipated failure and the anticipated actual delivery date. If Vendor fails to make delivery of any part of the Items on the date(s) indicated in the Purchase Order, MARIANNA may terminate the Purchase Order and pursue all remedies available to it. All shipments of Items that are goods shall be delivered F.O.B. to the destination designated by MARIANNA in the Purchase Order, and title and risk of loss shall remain with Vendor until such Items in a completed state are received by MARIANNA, its agent or consignee regardless of whether or not MARIANNA has made full payment for the Items. Bills of lading shall indicate the relevant purchase order number. If expedited shipment is necessary in order for Vendor to fulfill its delivery obligations, Vendor shall pay the difference between express charges and the charges for the manner of shipping set forth in the Purchase Order. Unless otherwise provided by law, Vendor shall pay all sales, use, excise, and other taxes, charges, and contributions now or hereafter imposed on, or with respect to or measured by the Items furnished hereunder or the compensation paid to persons employed in connection with performance hereunder and Vendor shall hold MARIANNA harmless and indemnify MARIANNA against any liability and expense by reason of Vendor's failure to pay such taxes, charges, or contributions.

## **8. SHIPPING TO MARIANNA**

Shipping details will be indicated by MARIANNA on all Purchase Orders. Any questions or issues about shipping should be addressed with MARIANNA's Purchasing Office prior to shipping. Vendor should assign each Purchase Order a separate Packing Slip. Each shipment from Vendor must include a Packing Slip that identifies MARIANNA's Purchase Order Number, Item Descriptions, Item Numbers, and Quantities.

Vendor shipments of perishable Items and those with specific temperature requirements must have that information clearly labeled on the Bill of Lading. Items damaged during shipping at the fault of the Vendor due to improper preparation, improper storage or inadequate packaging / insulating materials similar will result in MARIANNA refusing delivery without payment and Items being shipped back to Vendor at Vendor's expense.

Any delivery after the stated cancel date may be rejected unless there is written authorization from MARIANNA.

All Items must adhere to U.S. Federal Regulations. All product information and labeling must be in English and follow U.S. Federal standards.

Proper documentation must accompany each Shipment. The Packing Slip and Invoice must reference the product and its packaging (glass jar, metal tin, etc.) and Vendor's U.S. Federal Registration Number. MARIANNA is not liable for any improper documentation or

labeling by Vendor that causes shipment to be held in US Customs. Items damaged during shipping and deemed unacceptable will result in MARIANNA refusing delivery without payment and Items being shipped back to Vendor at Vendor's expense.

## **9. PRODUCT LIABILITY & PRODUCT RECALLS**

Vendor must carry Product Liability Insurance with minimum policy limits of \$1,000,000 per occurrence and must furnish evidence of such insurance to MARIANNA upon request.

Vendor is to immediately inform MARIANNA of a product recall for any Item. Vendor will promptly produce a letter to detail the recall and shall indemnify MARIANNA for any damages incurred as a result of such recall.

Notwithstanding the generality of the previous sentence, MARIANNA may issue refunds to all customers in cases of product recall. Vendor will promptly pay MARIANNA all costs incurred in this process including shipping expenses, labor, and materials.

Recalled Items remaining at MARIANNA locations will be returned to Vendor at Vendor's expense. MARIANNA's account is to be promptly credited with a full refund for the returned Items.

## **10. INSPECTION**

MARIANNA may inspect any Items ordered hereunder during their manufacture, construction or preparation at reasonable times and shall have the right to inspect such Items at the time of their delivery and/or completion. Items furnished hereunder may at any time be rejected for defects revealed by inspection or analysis even though such Items may have previously been inspected and accepted. Such rejected Items may, at MARIANNA's option, be removed and/or returned to Vendor for full refund to MARIANNA, including removal, shipping and transportation charges.

## **11. COMPLIANCE WITH LAWS**

Vendor agrees that it shall be Vendor's responsibility to comply with all applicable laws and regulations relating to the Items and the manufacture, construction, transportation, and use thereof.

## **12. WARRANTIES**

Vendor warrants that the Items will (a) be of merchantable quality; (b) be fit for MARIANNA's particular purposes; (c) be of high quality and be free from defects in material and workmanship; (d) comply with the MARIANNA's specifications, performance guarantees and requirements; (e) comply with all nationally recognized codes and established industry standards; and (f) do not infringe any intellectual property rights of any third party. All Items shall be sold or provided by Vendor to MARIANNA free and clear of any liens and encumbrances. Vendor's warranties and guarantees shall survive inspection, delivery and acceptance of the Items and/or payment by MARIANNA. If the Items do not conform to any of these warranties, then, at MARIANNA's option, Vendor shall repair or replace the defective Items, F.O.B. MARIANNA's designated site at Vendor's expense, or in the case of Items that are services, re-perform such services at Vendor's expense. In the event that, in the reasonable opinion of MARIANNA, Vendor cannot repair or replace the Items, or re-perform the services, within a reasonable time, then MARIANNA may take all steps necessary to have the breach cured and/or may terminate the Purchase Order. In any event, Vendor shall be responsible for all expenses and damages which MARIANNA incurs because of the breach. The foregoing warranties and obligations shall also apply to the Items supplied by Vendor in such repair, replacement or re-performance. Disclaimers of express or implied warranties and limitations of liability in any Vendor document will be of no effect unless specifically agreed to in writing by MARIANNA, and even then shall not apply in the event of bad faith by the Vendor in the performance of the Purchase Order. All warranties shall survive acceptance of the Items and/or payment by MARIANNA.

## **13. INDEMNITY**

Vendor releases and shall indemnify and hold MARIANNA and its agents, consignees, employees and representatives harmless from and against all expenses, costs, charges, damages, judgments, claims, suits, losses, fines, penalties or liabilities, including attorneys' fees, of every kind whatsoever by reason of, arising out of, or in any way connected with (i) its performance or nonperformance under the Purchase Order or (ii) any injury, disease, or death of persons or damage to or loss of any property (including but not limited to Item recalls or damage to MARIANNA's premises) or the environment resulting from or in connection with the Items or its performance or nonperformance of the Purchase Order. This indemnification shall be in addition to the warranty obligations of Vendor. Vendor, in any indemnification claim hereunder, hereby expressly and without reservation waives any defense or immunity it may have under any applicable Workers' Compensation laws or any other statute or judicial decision, disallowing or limiting such indemnification where an employee of Vendor makes a claim against any indemnitee herein, and Vendor consents to a cause of action for indemnity.

## **14. DEFAULT; REMEDIES**

If Vendor: (a) becomes insolvent; (b) has a petition under any chapter of the bankruptcy laws filed by or against it; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver requested or appointed to it; or (e) fails to comply with any of its representations, warranties, agreements, or other obligations under the Purchase Order, then in any such case MARIANNA may, in addition to any other rights set forth in the Purchase Order or available to MARIANNA at law or in equity, at its option either cure the default at Vendor's expense or terminate the Purchase Order after first giving Vendor ten (10) days written notice to cure such default, if Vendor has failed to cure such default within such ten (10) day period. Immediately after such termination, MARIANNA may: (i) take possession of the Items wherever they may be located and in whatever state of completion they may be together with all drawings and other information necessary to enable MARIANNA to have the Items completed, installed, operated, maintained and/or repaired; (ii) pay to Vendor any amount then due under the Purchase Order after taking full credit for any offsets to which MARIANNA may be entitled; (iii) contract with or employ any other party to finish the Items; and (iv) collect from Vendor any additional costs, expenses, losses or damages which MARIANNA may suffer. Any rights or remedies granted to MARIANNA in any part of the Purchase Order shall not be exclusive of, but shall be in addition to, any other rights or remedies granted in any other part of the

Purchase Order and to any other rights or remedies that MARIANNA may have at law or in equity.

#### **15. ASSIGNMENT**

Vendor may not assign or subcontract the Purchase Order or any right thereunder without the prior written consent of MARIANNA, provided that if MARIANNA consents to such assignment or subcontracting, Vendor shall nevertheless remain fully responsible for all work performed by such assignee or subcontractor. MARIANNA may assign the Purchase Order to any of its affiliated companies or any third party who acquires MARIANNA's business to which the Purchase Order pertains.

#### **16. TIME OF THE ESSENCE**

Time is of the essence regarding Vendor's performance of the Purchase Order and MARIANNA's right to require strict performance by Vendor shall not be affected by any waiver, forbearance, course of dealing, or force majeure event.

#### **17. MISCELLANEOUS**

In the event that any words, phrase, clause, sentence or other provision of the Purchase Order shall violate any applicable statute, ordinance or rule of law in any jurisdiction in which it is used, such provision shall be ineffective to the extent of such violation without invalidating any other provision of the Purchase Order. The failure of either party hereto to require strict compliance with or complete performance of any obligation of the other party hereto by such other party shall not be construed as a waiver of any subsequent breach by such other party. The Purchase Order sets forth the entire agreement between the parties on the subjects covered herein and no terms, conditions, understanding or agreement purporting to modify or vary the terms of the Purchase Order shall be binding unless made in writing and signed by the parties.

#### **18. GOVERNING LAW; VENUE**

This Agreement will be governed by and construed in accordance with the laws of the State of Nebraska without respect of its conflicts of laws provisions. Any dispute or action concerning the Purchase Order shall be determined exclusively in state or federal courts serving Omaha, Nebraska. The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.



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