

# **Cavender Stores, Ltd.**

## **Purchase Order Terms and Conditions**

1. **Applicability.** This purchase order is an offer by Cavender Stores, Ltd., a Texas limited partnership (“**Buyer**”), to purchase the goods specified on the face hereof or in any schedule attached hereto or transmitted herewith (the “**Goods**”) from the party to whom this purchase order is addressed (“**Seller**”) in accordance with and subject to these terms and conditions (the “**Terms**”, and together with the terms and conditions on the face of this purchase order and in any schedule, spreadsheet or exhibit attached hereto or transmitted herewith, the “**Order**”). The Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, both written and oral, with respect to the subject matter of the Order. Seller’s acceptance of the Order is subject solely to the terms of the Order. The Terms shall prevail over any terms or conditions contained in any other documentation, whether in physical or digital form, and expressly exclude any of Seller’s terms and conditions of sale or any other documentation issued by Seller in connection with the Order. The Terms shall apply to any repaired or replacement Goods provided by Seller hereunder.

2. **Acceptance.** The Order is not binding on Buyer until Seller accepts the Order by sending Buyer a Notice, provided that Buyer may withdraw and cancel the Order, even after it has been accepted by Seller, at any time prior to the cancellation date specified in the Order (the “**Cancellation Date**”). After the Cancellation Date, the Order may be accepted by Seller only with the prior consent of Buyer.

3. **Delivery Period.** Seller shall deliver the Goods in the quantities specified in the Order, such delivery to begin no earlier than the earliest date specified in the Order (the “**Ship Not Before Date**”), unless otherwise agreed in writing by the parties. Timely delivery of the Goods is of the essence. If Seller fails to deliver all of the Goods by the Cancellation Date, Buyer may cancel or terminate the Order pursuant to Section 20 without liability by sending a Notice to Seller, and in such event Seller shall indemnify Buyer against any losses, claims, damages, and costs and expenses directly attributable to Seller’s failure to deliver all of the Goods by the Cancellation Date. Buyer may return to Seller at Seller’s sole risk and expense any Goods delivered by Seller prior to the Ship Not Before Date, and Seller shall redeliver such Goods prior to the Cancellation Date at its sole risk and expense.

4. **Quantity.** If Seller delivers less than the quantity of Goods specified in the Order by the Cancellation Date, Buyer may reject all of the Goods, and may also cancel or terminate the Order pursuant to Section 20 without liability. Any such rejected Goods shall be returned to Seller at Seller’s sole risk and expense. If Buyer does not reject the Goods and instead accepts delivery of a reduced quantity of the Goods, the Price for the Goods shall be adjusted on a pro rata basis.

5. **Delivery Location.** All Goods shall be delivered to the “Ship To” address(es) specified in the Order (each a “**Delivery Location**”) during Buyer’s normal business hours or as otherwise instructed by Buyer.

6. **Shipping Terms.** Delivery of the Goods to Buyer shall be made in accordance with the shipping and other terms specified in the Order. Seller shall send a Notice to Buyer when the Goods to Buyer are delivered to a carrier for transportation. Prior to or contemporaneous with delivery of any portion of the Goods, Seller shall provide to Buyer all shipping documents, including without limitation the commercial invoice, packing list, bill of lading, air waybill, and any other documents necessary to enable Buyer to secure release of the Goods. The Order number specified in the Order must appear on all documents and correspondence pertaining to the Order that are prepared by Seller.

7. **Title and Risk of Loss.** Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location.

8. **Packaging.** All Goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered to Buyer in undamaged condition.

9. **Amendment.** Subject to the provisions of Section 2, no change to the Order shall be effective unless it is in writing, states that it amends the Order, and has been approved by authorized representatives of both parties.

10. **Inspection and Rejection of Nonconforming Goods.** Buyer has the right to inspect the Goods on or after the Ship Not Before Date. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer may, by sending a Notice to Seller: (a) cancel or terminate the Order in its entirety pursuant to Section 20 without liability, and return the Goods to Seller at Seller's sole risk and expense; (b) accept the Goods at a reasonably reduced price; or (c) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its sole cost and expense, replace the nonconforming or defective Goods within 30 calendar days and pay for all related costs and expenses, including without limitation transportation charges for the return of such Goods and the delivery of the replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace the nonconforming or defective Goods with goods purchased from a third party, charge Seller the cost thereof, and cancel or terminate the Order pursuant to Section 20 without liability. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

11. **Price.** The price of the Goods is the unit cost or net cost specified in the Order, multiplied by the total quantity specified in the Order (the "**Price**"). Unless otherwise specified in the Order, the Price includes all packaging costs. No increase in the Price is effective, whether due to increased material, labor, transportation or other costs, or otherwise, without the prior consent of Buyer.

12. **Most Favored Customer.** Seller represents and warrants that the unit cost or net cost for the Goods specified in the Order is the lowest price charged by Seller to any of its unaffiliated buyers for similar quantities of similar goods. If Seller charges any such other buyer a lower unit cost or net cost for similar quantities of similar goods, Seller must apply that price to all of the Goods. If Seller does not agree to sell all of the Goods to Buyer at the lower price, Buyer, at its option, may cancel or terminate the Order pursuant to Section 20 without liability.

13. **Payment Terms.** Seller shall issue an invoice to Buyer upon or at any time after the completion of delivery of the Goods, which invoice must be in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller in accordance with the terms specified in the Order, including without limitation those set forth in any amendment the parties may have approved pursuant to Section 9, provided that Buyer shall not be obligated to pay any amounts disputed by Buyer in good faith until the dispute has been resolved. The parties shall seek to resolve any disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute.

14. **Setoff.** Without prejudice to any other right or remedy it may have, Buyer shall have the right to set off at any time any amount owed to Buyer by Seller against any amount owed by Buyer to Seller.

15. **Warranties.** Seller warrants to Buyer that all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified in the Order; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; (f) not infringe any third party's patents or copyrights, misappropriate any third party's trade secrets or confidential information, or violate any other intellectual property rights of any third party; and (g) comply with all requirements of California's Safe Drinking Water and Toxic Enforcement Act of 1986, as amended and all regulations promulgated pursuant thereto ("**Prop 65**"). These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer sends a Notice to Seller that some or all of the Goods do not comply with Seller's warranties herein, Seller shall, at its sole cost and expense with respect to any claim by Buyer for Losses, within 30 calendar days replace or repair the nonconforming or defective Goods and pay for all related costs and expenses, including without limitation transportation charges for the return of the nonconforming or defective Goods to Seller and the delivery to Buyer of repaired or replacement Goods.

16. **General Indemnification.** Seller shall defend, indemnify and hold harmless Buyer and Buyer's parent, subsidiaries, affiliates, successors and assigns and their respective directors, managers, officers, shareholders, interest holders and employees and Buyer's customers (collectively, "**Indemnitees**") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including without limitation reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurers (collectively, "**Losses**") arising out of or occurring in connection with the Goods or Seller's negligence, willful misconduct or breach of the Terms, including without limitation all representations and warranties made herein by Seller. Seller shall not enter into any settlement with respect to any claim for Losses without the prior consent of Buyer and all applicable Indemnitees.

17. **Intellectual Property Indemnification.** Seller shall, at its sole cost and expense, defend, indemnify and hold harmless Buyer and all applicable Indemnitees against any and all Losses arising out of or in connection with any claim that the sale, use or possession of the Goods by Buyer or any Indemnatee infringes a patent or copyright of any third party or misappropriates any third party's trade secrets or confidential information or violates any other

intellectual property right of any third party. No counsel may be engaged by Seller to defend Buyer or any Indemnitee in any action of a third party against Buyer or such Indemnitee based on any alleged violation of any intellectual property rights of such third party unless such counsel has been approved in advance by Buyer. In no event shall Seller enter into any settlement of such a claim without the prior consent of Buyer and all applicable Indemnitees.

18. **Insurance.** If specified in the Order, during the term of the Order and for a period of four years thereafter, Seller shall, at its sole cost and expense, maintain and carry insurance in full force and effect of such types, and in such amounts of coverage, as Buyer may specify in the Order, including without limitation commercial general liability (including product liability) insurance, under policies issued by insurers acceptable to Buyer. If specified in the Order, Seller shall provide to Buyer certificates of insurance from Seller's insurers evidencing the insurance coverage specified in the Order. If specified in the Order, the certificates of insurance shall name Buyer as an additional insured. Seller shall provide a Notice to Buyer 30 calendar days in advance of any cancellation or material change in such specified insurance coverage. Except where prohibited by law, Seller shall require its insurers to waive all rights of subrogation against Buyer, Buyer's insurers and the applicable Indemnitees.

19. **Compliance with Law.** Seller is and the Goods are in compliance with, and shall continue to comply with, all applicable laws, regulations and ordinances, including without limitation Prop 65. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods pursuant to the Order. Seller assumes all responsibility for shipments of Goods requiring any governmental import clearance. Buyer may cancel or terminate the Order pursuant to Section 20 without liability if any governmental authority imposes antidumping duties, countervailing duties or any retaliatory duties or tariffs on the Goods, unless within 30 calendar days after Buyer provides to Seller a Notice regarding the imposition of such duties or tariffs, Seller has reimbursed Buyer for the total amount thereof.

20. **Termination.** Buyer may at any time by sending a Notice to Seller, cancel or terminate the Order, in whole or in part, for Goods that have not been delivered by the Cancellation Date or are otherwise not in accordance with the Order and Seller's warranties herein. In addition to any remedies that may be provided under the Terms, Buyer may cancel or terminate the Order with immediate effect by sending a Notice to Seller, either before or after Buyer's acceptance of the Goods, if Seller has not performed or complied with any of the Terms, in whole or in part, or has not performed or complied with all terms and conditions of any other agreement between Buyer and Seller. If Seller becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, Buyer may cancel or terminate the Order without liability by sending a Notice to Seller. If Buyer cancels or terminates the Order for any reason, Seller's sole and exclusive remedy shall be payment for Goods conforming to the Terms that were received and accepted by Buyer prior to such cancellation or termination.

21. **Limitation of Liability.** Nothing in the Order or the Terms shall exclude or limit (a) Seller's liability under Sections 15, 16, 17 and 23, or (b) Seller's liability for fraud, personal injury or death caused by its negligence or willful misconduct.

22. **Waiver.** No waiver by any party of any of the provisions of the Order or the Terms shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. **Confidential Information.** All non-public, confidential or proprietary information of Buyer, including without limitation specifications, samples, patterns, designs, plans, drawings, documents, data, customer lists, or information regarding Buyer's business operations, pricing, discounts or rebates ("**Confidential Information**"), disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of Seller in connection with the performance of its obligations under the Order, and may not be disclosed to third parties or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return to Buyer all Confidential Information, including without limitation all related documents and other materials, received from Buyer. Seller acknowledges that disclosure of Confidential Information to third parties, or unauthorized use of Confidential Information by Seller or third parties, may cause irreparable harm to Buyer, and that Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure by Buyer; or (c) rightfully obtained by Seller from a third party not under any obligation to Buyer.

24. **Force Majeure.** Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable ("**Force Majeure Event**"). Force Majeure Events include, without limitation, acts of God or the public enemy, government restrictions, floods, fires, earthquakes, explosions, epidemics, war, invasion, hostilities, terrorist acts, riots, strikes, embargoes or industrial disturbances. No economic hardship of Seller or change in market conditions shall be deemed to be a Force Majeure Event. Seller shall use all diligent efforts to end the delay or failure of its performance, ensure that the effects of any Force Majeure Event are minimized, and resume performance under the Order as soon as commercially reasonable. If a Force Majeure Event prevents Seller from carrying out its obligations under the Order for a continuous period of more than 30 calendar days, Buyer may cancel or terminate the Order pursuant to Section 20 without liability by sending a Notice to Seller.

25. **Assignment.** Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without the prior consent of Buyer. Any purported assignment, transfer, delegation or subcontracting in violation of this Section shall be null and void. No assignment, transfer, delegation or subcontracting by Seller shall relieve Seller of any of its obligations hereunder. Buyer may at any time assign, transfer or delegate any or all of its rights under the Order without Seller's prior consent.

26. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any

agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be implied from the Order.

27. **Third-Party Beneficiaries.** The Order is for the sole benefit of the parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Terms, provided that all affiliates of Buyer and all Indemnitees shall be deemed third party beneficiaries of the Order.

28. **Governing Law.** All matters arising out of or relating to the Order shall be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas.

29. **Jurisdiction and Venue.** Any legal suit, action or proceeding arising out of or relating to the Order shall be instituted in the federal courts of the United States of America or the courts of the State of Texas, in each case located in the City of Dallas and County of Dallas, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding.

30. **Cumulative Remedies.** The rights and remedies under the Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

31. **Notices.** All notices, requests, consents, authorizations, approvals, agreements, claims, demands, waivers and other communications pursuant to the Order (each, a “**Notice**”) shall be in writing (which term for purposes of the Order shall include email or other forms of electronic communication) and delivered by (a) email or other electronic means specified in the Order, (b) personal delivery, (c) nationally recognized overnight courier (with all fees pre-paid), (d) facsimile (with confirmation of transmission), or (e) certified or registered mail (in each case, return receipt requested, postage prepaid). Notices shall be addressed (a) if to Buyer (i) by email: jim@cavenders.com, (ii) by personal delivery, courier or mail: Cavender Stores, Ltd., 7820 South Broadway, Tyler, Texas 75703, Attn: James R. Thompson, Chief Financial Officer, or (iii) by facsimile: (903) 509-9020, Attn: James R. Thompson, Chief Financial Officer, (b) if to Seller, in accordance with the address information for Seller set forth in Buyer’s Vendor Master File, or (c) for either party, to such other address as may be designated by the receiving party by sending a Notice. Except as otherwise provided in the Order, a Notice is effective only (a) upon receipt of the receiving party, or (b) if the party giving the Notice has complied with the requirements of this Section. For purposes of the Order (a) “signed” shall include by electronic signature, (b) an electronic signature, whether digital or encrypted, of a party is intended to authenticate the communications to which it relates and to have the same force and effect as a manual signature, and (c) “electronic signature” means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including without limitation facsimile or email electronic signatures pursuant to the Texas Uniform Electronic Transactions Act (Tex. Bus. & Com. Code Ann. § 322.001 et seq.) as amended from time to time.

32. **Severability**. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

33. **Survival**. Provisions of the Order that by their nature should apply beyond their terms will remain in force after any termination, cancellation or expiration of the Order, including without limitation the following provisions: Title and Risk of Loss, Setoff, Warranties, General Indemnification, Intellectual Property Indemnification, Insurance, Compliance with Law, Limitation of Liability, Confidential Information, Third-Party Beneficiaries, Governing Law, Jurisdiction and Venue, and Survival.