

All purchases of products and/or services (collectively “Goods”) by The Merchant of Tennis, its parent or its affiliates (collectively, “Buyer”) are expressly subject to and conditioned on the terms and conditions set forth herein and on the front side of Buyer’s purchase order (collectively “Terms”), and on no other terms and conditions unless expressly agreed to in writing and signed by an officer of Buyer. The seller(s) of the Goods to Buyer are referred to as “Vendor.” THE ARRANGEMENT IS BETWEEN BUYER (A COMPANY) AND VENDOR ONLY, AND VENDOR AGREES THAT BUYER’S PRINCIPALS AND AGENTS ARE NOT LIABLE UNDER ANY CIRCUMSTANCES. Buyer’s orders for Goods, including all of Buyer’s purchase orders, requests for quotation and any other form for placing orders, are referred to as “Order.” Invoices, bills of lading, quotations and any other form for billing or pricing of Goods supplied or sold by Vendor are referred to as “Invoice.” All Invoices are subject to the Terms. Buyer objects to and rejects any terms or conditions in any Invoice that are in addition to or different from these Terms. If an Invoice is conditioned upon Buyer’s acceptance of Vendor’s terms and conditions, and the terms of quantity and price of the Goods set forth in Buyer’s Order are the same as set forth in Vendor’s Invoice for the Goods, then all additional or different terms in Vendor’s Invoice are expressly rejected, and Buyer’s acceptance shall create an agreement between Buyer and Vendor on these Terms. Vendor’s agreement to these Terms shall also occur upon (i) Vendor’s commencement of performance or (ii) Vendor’s signature on an Order. If any Terms are not acceptable, Vendor should not begin performance. Documents attached by Buyer to its Order are part of the Terms.

1. The Goods shall conform strictly to Buyer’s Order and specifications and shall be first class quality. Time is of the essence. All Goods shall be delivered at the exact times and in the exact quantities Buyer specifies. Delivery may not be in installments unless requested on the front side of an Order. Buyer rejects any excess or insufficient quantities, Buyer is under no obligation to return or pay for any excess quantities, and Vendor agrees to make up any insufficient quantities. If deliveries fail to meet Buyer’s schedule or if any Goods are non-conforming, Buyer may, without limiting its rights or remedies, direct further production and shipping, and Vendor will pay any additional costs. If Vendor may not be able to perform fully by the date Buyer specifies, Vendor shall notify Buyer immediately to give Buyer sufficient time to decide whether to cancel all or part of an Order without obligation by Buyer. Vendor will reimburse Buyer for all damages.
2. Payment for Goods is only due within the number of days specified on the front side of the Order after both receipt of Vendor’s Invoice and delivery of all Goods as Buyer specifies. Payment shall not constitute approval or acceptance of Goods by Buyer, and Buyer’s right of inspection survives payment. All Goods are subject to inspection and testing at times and places Buyer determines, both before and after delivery. Vendor will permit access to its facilities by Buyer’s representatives and customers to verify the quality of work, records and materials, and Buyer may inspect all licenses, permits and testing records. Any discount offered by Vendor shall begin from when Goods are received by Buyer. Inspections and payments by Buyer prior to delivery, including but not limited to payments to obtain discounts, shall not constitute acceptance nor constitute a waiver or release of any Terms.
3. IF ANY GOODS ARE NON-CONFORMING, IF ANY GOODS ARE RETURNED BY BUYER OR CUSTOMERS FOR ANY REASON (INCLUDING BUT NOT LIMITED TO PROBLEMS/COMPLAINTS/FAILURE TO SELL), AND/OR IF VENDOR BREACHES ANY MATERIAL PROMISES, THEN BUYER MAY WITHHOLD ALL PAYMENTS UNTIL THERE IS A RESOLUTION OF THE EXTENT OF THE DEFECTS, RETURNS, VENDOR’S BREACH OF ANY MATERIAL PROMISES AND DETERMINATION OF THE AMOUNT OWED BY BUYER. IF ANY GOODS ARE RETURNED BY CUSTOMERS FOR ANY REASON, VENDOR WILL CREDIT BUYER FOR ALL RETURNS AND ALL HANDLING CHARGES FROM CUSTOMERS, AND VENDOR WILL PAY BUYER’S OWN HANDLING CHARGES (18% OF THE PRICE OF RETURNED GOODS). IF ARRANGEMENT IS A PASS THROUGH (VENDOR ARRANGES FOR RESALES OF PRODUCT FROM BUYER TO CUSTOMERS) THEN VENDOR IS FULLY RESPONSIBLE FOR ALL ISSUES WITH RESALES, INCLUDING PAYING BUYER’S STORAGE CHARGES (\$30/PALLET/MONTH) AND 18% HANDLING CHARGES FOR ANY DELAYS BY CUSTOMERS IN ACCEPTING GOODS.
4. Prices of the Goods are those stated on the front side of the Order. Vendor agrees that such prices will not be less favorable than those charged to other of Vendor’s customers for similar Goods. If Buyer has overpaid, then Vendor agrees to credit Buyer for all costs associated with the overpayment/overcharge. Prices for the Goods remain firm for the quantities ordered notwithstanding any delays in delivery or acceptance. All insurance, packaging, storage and

transportation costs are borne by Vendor. Unless the Order otherwise states, no charge will be allowed for tooling, printing plates, packing or shipping. The price specified by Buyer in the Order includes all taxes, fees and other charges, and Buyer is not be obligated to pay any additional amounts in any form.

5. If any Goods do not meet Buyer's specifications or otherwise do not strictly conform to the Order, Buyer may reject all or any part of such Goods. Any Goods rejected after delivery may, at Buyer's option, (a) be returned to Vendor for reimbursement, credit, set-off, replacement or correction, at Vendor's sole expense, or (b) Buyer may correct or replace such Goods, at Vendor's sole expense, without obligation to return defective Goods. Acceptance of any portion of any delivery from Vendor shall not be deemed to constitute a waiver of Buyer's right to discover damaged goods, and in no event will any acceptance of a portion of Goods be deemed an acceptance of any portion not specifically and expressly accepted. Vendor will credit Buyer for damaged, mishandled, or defective Goods.

6. IN ADDITION TO ANY OTHER WARRANTIES, VENDOR EXPRESSLY WARRANTS THAT ALL GOODS WILL (i) BE SALABLE TO ANYONE, EVEN THOSE OUTSIDE ANY DESIGNATED OR AUTHORIZED CHANNELS OF DISTRIBUTION, AND BE FREE FROM DEFECTS IN OR CLAIMS AGAINST GOOD TITLE, (ii) CONFORM TO BUYER'S SPECIFICATIONS AND ORDER, (iii) BE FREE FROM DEFECTS IN MATERIAL, DESIGN AND WORKMANSHIP, (iv) BE MERCHANTABLE IN ALL RESPECTS, (v) BE FIT FOR THE PARTICULAR PURPOSE FOR WHICH BUYER INTENDS TO USE THE GOODS, (vi) COMPLY WITH ALL COURT ORDERS, JUDGMENTS, AGREEMENTS, LAWS AND REGULATIONS OF ANY KIND, (vii) NOT INFRINGE ON ANY OTHER PARTY'S RIGHTS, INCLUDING WITHOUT LIMITATION, PATENTS, TRADEMARKS, TRADES DRESS, TRADE NAMES, COPYRIGHTS, RIGHTS OF PRIVACY, TRADE SECRETS AND OTHER INTELLECTUAL PROPERTY RIGHTS, (viii) BE PROVIDED IN COMPLIANCE WITH OSHA (29 U.S.C. 651), CPSA (5 U.S.C. 5314, 5315 AND 15 U.S.C. 2051-2081) AND ALL OTHER SAFETY AND LABOR RULES. ANY ATTEMPT BY VENDOR TO EXCLUDE, LIMIT OR DISCLAIM ANY OF THE FOREGOING, WHETHER IN VENDOR'S ACKNOWLEDGMENT, INVOICE OR OTHERWISE, SHALL BE NULL, VOID AND UNENFORCEABLE.

7. Unless otherwise provided by this Order, the applicable Order number shall appear on all tags, containers, bills of lading, receipts, packing lists, and Invoices from Vendor. All corrugated items must show Buyer's name/logo. Shipments shall be accompanied by a packing slip describing the contents, weight and quantity of the Goods in each package. If Vendor's Invoice does not reflect the correct Order number and pricing, payment terms do not start until a revised Invoice is received. Any Goods Buyer specifies as requiring a pallet must be shipped on 4-Way GMA # 1 hardwood pallet, and non-conformity in this respect (as to palletizing) is subject to a debit at the actual pallet rate plus a \$10 handling fee per pallet.

8. VENDOR'S EXCLUSIVE REMEDY AND BUYER'S SOLE LIABILITY IN ANY LAWSUIT, CLAIM, OR LOSS THAT RELATES TO OR ARISES OUT OF ANY TRANSACTION, WHETHER BASED ON CONTRACT, TORT OR OTHER THEORY, SHALL BE LIMITED TO BUYER'S SPECIFIED PRICE FOR THE GOODS. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL OR BUSINESS INTERRUPTION DAMAGES, REGARDLESS OF CAUSE OR FORM AND EVEN IF BUYER IS ON PRIOR NOTICE. ONLY IN THE EVENT ANY PART OF THIS SECTION IS UNENFORCEABLE, BUYER'S TOTAL LIABILITY IN CONNECTION WITH ANY ORDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS. ONLY IF ANY PART OF THIS SECTION IS UNENFORCEABLE, THIS SECTION SHALL NOT RELIEVE BUYER FROM LIABILITY FOR DAMAGES DUE TO GROSS NEGLIGENCE OR WILLFUL ACTS.

9. Vendor assumes all risk of loss and damage to the Goods until Buyer accepts delivery. Vendor will have utmost security over the Goods. Vendor shall arrange for such insurance as is necessary to protect and cover the Goods. Acts of God, war, riot, embargoes, fire, explosions, strikes and any causes beyond Buyer's complete control constitute valid grounds for Buyer to terminate, cancel or suspend delivery, without penalty.

10. Buyer may, at any time, by written notice, make changes in: (a) tooling drawings, designs or specifications, where the Goods to be furnished are to be specially manufactured for Buyer; (b) method of shipment or packing; (c) place of delivery; and (d) delivery schedule. Vendor will promptly comply with such change(s). If such change(s) cause an increase or decrease in the cost of, or the time required for, performance of any work, an equitable adjustment may be made by Buyer in the price or delivery schedule, or both, and this Order may be modified in writing accordingly, only if a claim by Vendor for adjustment under this Section is asserted within three (3) days from the date of receipt of notice of change by Vendor. Where the cost of property made obsolete or excess as a result of any change requested by Buyer is included in Vendor's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.

Failure to agree on any claim for an equitable adjustment under this Section will be a dispute, and pending the resolution of any such dispute, Vendor will diligently pursue the performance of this Order as changed.

11. Buyer has the exclusive right, title and interest in and to all artwork, inventions, processes, designs, molds, tooling, printing plates, dies, die lines and other properties, made or acquired by Vendor in connection with Buyer's Order (collectively "Designs and Tools") whether or not such Designs and Tools were charged to or paid for by Buyer. Vendor agrees to transmit to Buyer all Designs and Tools within 48 hours after Buyer's request without qualification or further performance by Buyer. If Vendor fails to transmit such Designs and Tools within 48 hours after Buyer's request, Vendor agrees to reimburse Buyer any expenses incurred by Buyer in making new Designs and Tools.

12. Vendor shall not disclose any nonpublic, confidential, proprietary, and trade secret information obtained from Buyer. If any Goods contain a trademark, patent, character, design, name, symbol and/or other proprietary material owned, copyrighted or licensed by Buyer ("Licensed Material"), Vendor agrees that Licensed Material is in no way Vendor's property. THE MANUFACTURE OF MERCHANDISE CONTAINING LICENSED MATERIAL OR THE PERFORMANCE OF SERVICES INCORPORATING LICENSED MATERIAL WITHOUT A LICENSE IS A VIOLATION OF LAW. Vendor shall not use in any way any of the Designs and Tools, or any trademarks, patents, trade names, copyrighted works or samples of Buyer for any purpose other than to perform this Order. Vendor and Buyer acknowledge that they are not agents of each other.

13. Vendor shall defend (counsel selected by Buyer and paid for by Vendor), indemnify and hold harmless Buyer and Buyer's officers, directors, employees and agents, from all claims, losses, demands, liabilities, actions, damages, settlements, costs and expenses in any way arising out of or related to any actual or alleged: (a) defect in the design, material or workmanship of the Goods; (b) breach by Vendor of any of these Terms; (c) personal injury, death or property damage in connection with the Goods; (d) infringement or misappropriation of any patent, copyright, trade name, trade dress or trade secret regarding the Goods; (e) acts or omissions of Vendor; and (f) price discrimination or price fixing regarding the Goods. Buyer may control any defense and has the authority to settle any claim or lawsuit.

14. The agreement between Buyer and Vendor has been made in Los Angeles, California, requires performance in Los Angeles, California, and all rights and duties arising out of or relating in any way to any Order or transaction(s) between the parties, including but not limited to any and all disputes as to the legality, interpretation, enforcement and performance of the Terms, shall be governed by, construed and enforced in accord with the laws of the State of California without regard to any conflict of laws rules. Vendor agrees that service of process can be effected on it by service on the Secretary of the State of California. VENDOR FURTHER AGREES THAT VENUE AND JURISDICTION FOR ANY AND ALL DISPUTES WITH BUYER SHALL EXCLUSIVELY LIE WITH A COURT OF COMPETENT JURISDICTION LOCATED IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

15. Vendor's rights and duties may only be assigned upon Buyer's prior written consent. The rights and duties hereunder are binding upon and inure to the benefit of the parties, their respective successors, Buyer's assigns and Vendor's permitted assigns. The rights and duties hereunder shall survive the termination of the parties' agreement and shall not be deemed waived, terminated or merged by Buyer's acceptance of performance. Buyer's failure to strictly enforce any Terms, or to exercise any rights, shall not constitute a waiver of Buyer's rights to strictly enforce such Terms or to exercise such rights thereafter. The waiver by Buyer of any default or breach must be specifically and expressly agreed to in writing and signed by an officer of Buyer, and any such waiver shall not operate as a waiver of any other default or breach, even of the same kind. To the extent Buyer has waived any rights or Terms, such waiver shall not be deemed or construed as a further or continuing waiver. Buyer's rights and remedies are cumulative and in addition to any rights and remedies at law or in equity.

16. These Terms constitute the entire agreement between the parties. Vendor represents it has approved the Terms after review by its legal counsel or voluntarily waived its right to such a review. If any Terms are invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining Terms will not in any way be affected or impaired. There shall be no right, to attorneys' fees in any way related to the breach of these Terms, the promises between the parties and/or the transactions between the parties.