

BIG HEART PET BRANDS PURCHASE ORDER TERMS AND CONDITIONS

"Buyer" shall mean Big Heart Pet Brands and "Seller" shall mean the vendor or supplier to whom this Purchase Order has been issued. "Order" shall refer to this Order and all amendments and exhibits hereto.
PERFORMANCE AGAINST THIS PURCHASE ORDER CONSTITUTES ACCEPTANCE OF ALL TERMS AND CONDITIONS

1. **Title and Risk of Loss.** Title to the goods and risk of loss shall pass to Buyer upon delivery free and clear of all charges, claims and liens of any nature. Unless otherwise agreed in writing, title to goods and all risk of loss during shipment, and if from foreign point until clearance by United States Governmental Department or Agency having jurisdiction, shall remain with Seller irrespective of F.O.B. point or other terms. If shipment is from a foreign point, Seller shall fully comply with the provisions of the customs laws of the country of import in regard to valuation for duty, etc. Unless otherwise agreed in writing, Seller shall be responsible for the payment of all duties, taxes, tariffs, broker fees, insurance and other costs associated with delivery of the goods to Buyer.

2. **Delivery; Transportation Costs.** Seller must show delivering carrier on Bill of Lading and must follow Buyer's routing instructions if the terms of sale are F.O.B. Seller's facility. No charges will be allowed for packing, boxing, draying or storage unless stated herein. When terms of delivery or conditions of this Order are F.O.B. Buyer's facility, all transportation charges shall be paid by Seller. Excess transportation or other costs resulting from any deviation of the terms set forth herein shall be borne by Seller.

3. **Identification.** Seller's name and Buyer's purchase and shipping Order numbers must be on all invoices, packages, shipping documents and correspondence.

4. **Discount Period; EDI.** Discount period shall begin when Buyer shall have received both invoice (electronic or hard copy) and proper shipping papers, or upon Buyer's receipt of the goods, whichever is later. Seller shall utilize EDI processes specified by Buyer.

5. **Time of Delivery; Buyer's Remedies.** Time of delivery is of the essence for this Order. If Seller fails to make shipment as per time specified in Order, or if no time is specified, within five days of receipt of shipping Order, Buyer reserves the right to refuse any goods and cancel this Order, and any advance payments shall be returned to Buyer within 5 days. Seller shall indemnify Buyer for any losses or damages suffered by Buyer as a result of later delivery. Buyer may cancel any portion of this Order which remains unfilled after the beginning of any bankruptcy proceedings by or against Seller or after the appointment of an assignee for the benefit of Seller's creditors or of a receiver. Buyer's partial payments to obtain discounts, payment for, or acceptance of all or any part of the Order shall not bind Buyer to accept future shipments nor deprive it of the right to cancel or to return at Seller's expense all or any portion of the goods because of failure to conform to Order, or by reason of defects, latent or patent, or other breach of warranty, or to make any claim for damages, including manufacturing costs and other consequential and special damages incurred by Buyer. Such rights shall be in addition to any other remedies provided by law.

6. **Inspection.** Buyer reserves the right to inspect Seller's production and warehouse facilities and all articles and materials supplied by Seller, and to reject any articles or materials not in accordance with Buyer's specifications ("Specifications") or the warranties set forth herein, or shipped contrary to shipping instructions, and to return same at Seller's risk and expense, with all handling and incoming and outgoing transportation charges for Seller's account. Unless otherwise specified, Buyer's count and/or weight will be accepted as final. Articles or materials returned are not to be replaced except on written instructions from Buyer. Failure to give notice of defects to Seller shall not constitute a waiver of breach of warranty or of any other condition.

7. **Warranty.** Seller warrants that the articles and materials furnished under this Order will comply in all respects with the Specifications, are fit for the purpose intended, are merchantable, and are subject to Buyer's inspection upon receipt, as referred to under Paragraph 6 above. Seller warrants all articles and materials to be free from defects in materials or workmanship. If any articles or materials are foods or drugs, or are an ingredient or for use in the manufacture thereof, Seller guarantees that such articles or materials are produced, manufactured, processed, labeled, marked and shipped in accordance with all applicable Federal, state and local laws, not adulterated, contaminated by foreign materials, misbranded, mislabeled or falsely invoiced within the meaning of the Federal Food, Drug and Cosmetic Act, and are not goods which may not, under provisions of Sections 404 or 505 of the Act, be introduced into interstate commerce. Seller further warrants that such goods are not in violation of the provisions of the Food Additives Amendment of 1958 and have not been treated with any pesticide as defined in the Federal Insecticide, Fungicide and Rodenticide Act other than those accepted by the Environmental Protection Agency and in accordance with usage limitations established by the Environmental Protection Agency. If any articles or materials are for use as equipment for holding, handling, or processing of food, or are materials for the packaging thereof, or are a component of such packaging materials, Seller guarantees such articles or materials comply fully with all applicable laws. All warranties and conditions shall survive acceptance and Buyer reserves the right to require Seller to replace any articles and materials not supplied in accordance with these warranties, free of cost to Buyer.

Seller warrants, for a period of one year from date of installation and/or acceptance, that all articles and materials furnished or installed pursuant to this Order will function satisfactorily, if either installed by Seller or properly installed by others, and if operated and maintained in accordance with normal operating procedures and Seller's instructions, if any.

Buyer reserves the right to modify the Specifications at any time. Seller shall advise Buyer of any cost changes resulting from the modified Specifications, and Buyer shall have the right to accept such cost changes or terminate this Order. Any cost reductions resulting from a change in Specifications shall be for the benefit of Buyer.

8. **Labor and Employment Matters; Legal Compliance.** Seller warrants that all applicable provisions of the Fair Labor Standards Act, as amended and of regulations and orders issued thereunder will be complied with and that no article shall be manufactured in violation of any Federal or State Child Labor Wage & Hour, or Occupational Safety & Health Law. Seller further warrants that it shall not engage in any unfair labor, wage or benefits practice or practices in violation of the laws of any country of manufacture of articles provided hereunder or involving unsanitary, unhealthy, and/or unsafe conditions, the employment of child, forced, indentured, involuntary, prison or uncompensated labor, the use of corporal punishment, discrimination based on race, gender, national origin or religious beliefs, or similar employment activities and conditions. For purposes of this provision, "child labor" means the use of children who are under the age of fifteen (15) year. Buyer may, upon notice, inspect Seller's plant and facilities at reasonable times to determine compliance with the warranties set forth herein. This Order incorporates by reference the terms of Executive Order 13496 and 29 CFR Part 471 Appendix A to Subpart A.

Seller shall comply with all applicable laws, rules and regulations pertaining to environmental practices in the performance of its obligations hereunder. Seller shall not engage in any practice which is in violation of U.S. Customs laws or regulations, international agreements, or the laws of the country of manufacture.

Seller warrants that the prices for goods purchased hereunder and all allowances made and services provided in connection therewith are not discriminatory and not violative of the Federal Trade Commission Act or the Robinson-Patman Act, or any similar applicable law or regulation.

9. **Indemnity.** Acceptance of this Order shall constitute an agreement upon Seller's part to indemnify and hold Buyer, its successors, assigns and customers harmless from all liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by Buyer, or its successors, assigns or customers by reason of the failure of goods to conform to the Specifications or warranties set forth in this Order. Such indemnity shall be in addition to any other remedies provided by law, and shall survive acceptance of the goods and payment therefore by Buyer.

Seller warrants that it has full legal rights to all intellectual property provided hereunder, and agrees to defend and indemnify Buyer and hold it harmless from and against all liability, loss, damage and expense, including reasonable attorneys' fees, resulting from any actual or claimed trade-secret, trademark, patent or copyright infringements or other literary or artistic rights infringement affecting the articles or materials furnished hereunder, or any litigation based thereon, and such obligation shall survive acceptance of the goods and payment therefore by Buyer. If this Order relates to procurement of, or work on, machinery or equipment differing in structure or mode of operation from any item previously made by Seller, Seller agrees that every invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice in filing this Order, or in the performance of any research, design, or development work relating to the subject matter of this Order and which was done at the request of Buyer, shall be sole property of Buyer. Seller shall keep such inventions, improvements or discoveries in strictest confidence and shall neither use nor divulge any information relative thereto to anyone without Buyer's consent in writing.

Seller agrees to indemnify and save Buyer harmless and upon request defend Buyer from all loss, liability, damages, claims for damages, suits, recoveries, judgments or executions (including costs, expenses, and reasonable attorneys' fees) which may be made, had, brought or recovered by reason of or on account of injury to the property of any person whomsoever, or to any person (including death resulting therefrom), including Seller and its employees, caused by, arising from, incident to, connected with or growing out of this Order or any article provided hereunder.

If this Order covers the performance of labor at Buyer's premises only labor acceptable to Buyer may be employed, even if the performance of labor by Seller at Buyer's premises results from or is incidental to Seller's supplying the articles, material, equipment, parts and/or work covered by this Order.

10. **Buyer's Intellectual Property.** Any designs, tools, molds, dies, films, patterns, drawings, equipment or other such materials supplied by Buyer to Seller, or developed by Seller to produce the articles provided hereunder, shall be or remain the sole property of Buyer. By accepting this Order, Seller expressly agrees it will keep such material in strictest confidence and will neither use nor disclose to others any information relative thereto without Buyer's consent in writing. On completion of this Order or earlier upon request of Buyer, all such materials shall be delivered to Buyer.

11. **Price Protection.** Seller shall not, without a written authorization from Buyer, charge Buyer higher prices than specified herein or if Order is unpriced, charge prices higher than last charged or quoted for goods or services described herein. If before all deliveries under this Order are completed, Seller reduces its price on the articles or materials covered hereunder, Buyer will receive benefit of such reduction on any undelivered portion of this Order. In the event of an imposition of any tax on the articles and materials hereby furnished which must be borne by Buyer, Seller agrees to remit to Buyer any refund which Seller might receive by reason of the unwarranted collection of such tax.

12. **Insurance.** If this Order specifies the furnishing of a Bond, Seller will arrange to have issued Faithful Performance and/or Maintenance Bonds in amounts commensurate with this Order; these Bonds are to be executed and paid for by Seller as principal, and filed with Buyer. Unless otherwise agreed, Seller shall carry General Liability, Automobile Liability, and Workers' Compensation Insurance at the levels set forth below with insurance carriers that maintain an A.M. Best rating of a least "A" VIII and are qualified to do business in the state in which the Order is to be performed:

- (i) Commercial general liability with a limit of at least \$5 million per occurrence for bodily injury or property damage and including broad form contractual liability insurance which will specifically apply to the obligations of Seller under this Order, and broad form property damage, personal injury, plus product liability insurance or professional liability insurance if relevant to this Order);
- (ii) Automobile liability insurance for bodily injury and property damage liability with a limit of at least \$2 million per occurrence for bodily injury or property damage; and
- (iii) Statutory workers' compensation insurance.

All policies except Workers Compensation shall be endorsed to name "Big Heart Pet Brands and its subsidiary and affiliated companies of any tier" as additional insureds. All policies shall be endorsed to provide a waiver of subrogation, and provide Buyer with at least ten (10) days prior written notice of any cancellation of any such policies, and that such policies are primary and that any similar coverage maintained by Buyer will be excess and non-contributory. At the request of Buyer, Seller will provide a certificate of insurance along with copies of the endorsement(s) as required above or a broker statement that the insurance carried by the Seller complies with the provisions of this Agreement

13. **Assignment and Subcontracting.** Seller may not, without Buyer's written consent, assign or transfer, voluntarily or by operation of law, this Order, nor subcontract with any other party for the furnishing of goods specified by this Order. Buyer may assign its rights and obligations hereunder, in whole or in part, to any party without the consent of Seller.

14. **Force Majeure.** A party shall not be liable to the other for delay or failure to perform any of its obligations hereunder provided such delay or failure to perform is due to fire, storm, flood, earthquake, act of God, war, insurrection, riot, governmental action, or other unanticipated event beyond the control of such party (an "event of force majeure"). In the event Seller claims that an event of force majeure has rendered it unable to perform, and as a condition to exercising rights under this Section so that Buyer may seek alternative sources of performance, Seller must provide written notice to Buyer within 24 hours of the occurrence of such event, together with a detailed description of such event and the expected duration of non-performance. If any such cause continues or is expected to continue for more than thirty days, Buyer may at its option, cancel this contract.

15. **Entire Agreement.** This Order and any Specifications or directions attached hereto by Buyer, together with any written agreement between Buyer and Seller pursuant to which this Order is issued, contain the complete agreement between Buyer and Seller and no agreement or other understanding purporting to modify the terms and conditions hereof shall be binding upon Buyer unless otherwise agreed to by Buyer in writing subsequent to the date of this Order. No terms or conditions in any quotation, confirmation or acknowledgment heretofore or hereafter sent by Seller, contrary to or different than those set forth in this Order shall apply. The furnishing of any goods or services shall, at Buyer's option, indicate Seller's acceptance of the terms and conditions stated on both sides of this Order.

16. **Amendment/Modification.** None of the terms and conditions contained in this Order may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer and delivered by Buyer to Seller. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this Order except as they may be added to, modified, superseded or otherwise altered by Buyer, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer.

17. **Governing Law; Dispute Resolution.** This Order shall be interpreted and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of laws. The rights and obligations of Buyer and Seller under this Order shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to this Order, or the breach thereof, shall be adjudicated in the state or federal courts sitting in San Francisco, California.

18. **Waiver.** Buyer's failure to exercise any of its rights under this Order upon one occasion shall not waive Buyer's rights to enforce the same on another occasion.

19. **Equal Employment Opportunity.** Seller shall comply with the Equal Employment Opportunity Clause in Section 202 of Executive Order 11246 as amended and the Affirmative Action Clauses in 41 CFR 60-1.4, 60-4.3(a) and 60-300.5(a) and 41 CFR 60-741.5 Subpart A relating to affirmative action for veterans and the handicapped and applicable implementing rules and regulations of the Office of Federal Contract Compliance Programs which are incorporated herein by specific reference. As required by applicable law, Seller (and permitted subcontractors) with 50 or more employees shall maintain an Affirmative Action Plan and file EEO-1 and VETS-100 reports. The utilization of Small Business and Small Disadvantaged Business Concerns clause prescribed by Public Law 95-507 is incorporated herein by reference. The requirement of the Utilization of Labor Surplus Area Concerns clauses set forth in 41 CFR 1-1.805-3 is incorporated herein by reference. The utilization of Women-Owned Business Concerns clauses set forth in 41 CFR Chapter 1 are incorporated herein by reference.

20. **Hazardous Materials; MSDS.** If materials in this order are covered under provisions of the Federal Hazard Communication Standard (1910.1200), a Material Safety Data Sheet must be provided to the plant prior to shipment of the materials. Failure to comply will result in Big Heart Pet Brands and its subsidiaries being unable to accept delivery.