



Work Order 08231655 W

PURCHASE ORDER

DATE	12/04/23
PO. NUMBER	33818556 - 000 OS
PAGE NO.	1

STEVE SHARP
 C/O IMS
 8338 Austin Ave.
 MORTON GROVE IL 60053
 (847) 583-3915

VENDOR	1414102	SHIP TO	FASTPAK
ISEE STORE INNOVATIONS, LLC 3937 PARK AVE 63110 ST. LOUIS ST. LOUIS MO 631109			10100 58TH PLACE ATTN: RECEIVING DEPT. KENOSHA WI 53144

PO. DATE	FREIGHT TERMS	
11/13/23		
REQ DELY DATE	ORDER PLACED WITH	SHIP VIA
01/09/24 TC		
SPECIAL INSTRUCTIONS		
Job 123942		

USD

DESCRIPTION / ITEM NUMBER	QUANTITY ORDERED	U/M	UNIT COST	U/M	AMOUNT
Cali Cocktails Gravity Feed Shelf Roller FPO CKT24001DSP Phase: Domestic Production	386.00	CT	16.00	CT	6,176.00
Cali Cocktails Gravity Feed Shelf Roller FPO CKT24001DSP Phase: Freight	386.00	CT	.81	CT	315.30
Bundle Quantity: 1 Size: 2.55" x 4" x 27" Material: ABS Plastic, white # Of Colors: 1, Black logo front Custom Specs: Narrow channels hold up to: -Ten 12oz slim cans Ship To: Please email Kenosha.receiving@imsretail.com to schedule an appointment. Integrated Merchandising Solutions(IMS) 10100 58th Place Kenosha, WI 53144 Sample(s) To: 1 Sample to IMS Morton Grove 8338 Austin Ave Morton Grove IL 60053 PrePress: PDF needed for approval Collating/Bundling Instructions: Pack 1 per carton					

TERMS:	TOTAL ORDER
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State tax registration number available upon request.

Our P.O. Number must appear on all invoices, packing slips and bills of lading.

Shipping of the merchandise described above shall constitute the sole means of effecting an agreement between the parties. Such agreement shall be governed by the terms and conditions printed on the reverse side of this purchase order.

BUYER:

PURCHASE ORDER TERMS AND CONDITIONS
INTEGRATED MERCHANDISING SOLUTIONS LLC ("IMS")

SHIPMENT OF MERCHANDISE OR PROVISION OF SERVICES (the "Merchandise") PURSUANT TO A PURCHASE ORDER IS SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH BELOW (the "Terms" or the "Agreement"). MERCHANDISE NOT FULLY MEETING SPECIFICATIONS OR SHIPPED CONTRARY TO THE PURCHASE ORDER, WILL BE RETURNED OR HELD AT VENDOR'S RISK AND EXPENSE. PRICE MUST NOT BE HIGHER THAN LAST INVOICED OR QUOTED WITHOUT IMS'S PRIOR WRITTEN AUTHORITY.

- 1) General. IMS may from time to time during the Term, as defined below, issue Purchase Orders ("PO's") to Vendor for the purchase of Merchandise specified on the PO. Vendor will deliver Merchandise according to all descriptions, specifications and terms contained herein, listed on the face of the PO, as otherwise provided to Vendor by IMS, and subject to the provisions of these Terms and the Vendor Validation Application (the "Application"), which is expressly incorporated herein by reference.
- 2) Vendor Acceptance; Modifications. Vendor Acceptance. A PO is subject to withdrawal by IMS at any time prior to Vendor's acceptance of the PO. Vendor shall be deemed to have accepted a PO when: (i) IMS receives written notice via email, facsimile or mail that Vendor accepts the PO; (ii) IMS receives an oral acceptance via telephone or voicemail; (iii) Vendor ships the Merchandise; or (iv) IMS accepts delivery of the Merchandise. Upon Vendor's acceptance of a PO, these Terms and any additional terms and conditions set forth in the PO shall constitute the entire agreement relating to the purchase of the Merchandise.
- 3) Modifications. IMS may change these Terms upon written notice to Vendor. No inconsistent terms, additional terms or other changes to a PO, including without limitation, any terms or changes proposed by Vendor in writing when Vendor accepts or otherwise acknowledges receipt of a PO, shall become a part of the PO unless Vendor provides IMS with such proposed changes in writing within five (5) days after Vendor receives the PO, and IMS accepts such proposed changes in writing. Neither IMS's lack of objection to any such inconsistent or additional terms, or other changes, nor IMS's acceptance of Merchandise ordered by IMS pursuant to a PO shall constitute or otherwise be deemed an agreement by IMS to any such inconsistent or additional terms, or other changes.
- 4) Cancellation and Returns. IMS may reject or cancel the whole or any part of any PO, and return or hold the Merchandise involved at Vendor's expense for the following reasons and Vendor shall bear all transportation costs and all expenses, including but not limited to, costs of cover, unpacking, examining, repacking, storing and reshipping (collectively, "Costs") relating to any rejected or canceled Merchandise, if: a) Vendor does not deliver any part of the Merchandise; b) Vendor delivers defective Merchandise or Merchandise that otherwise does not comply with IMS's specifications, including but not limited to production overruns or underruns; c) Because time is of the essence applies to all delivery dates, Vendor delivers any Merchandise after the date indicated as "delivery date," unless written authorization is obtained from IMS not less than seventy-two (72) hours prior to shipment; d) It is alleged that any of the Merchandise, or the manufacture, handling or sale of such Merchandise infringes any patent, trademark, copyright, trade secret, or other third party right (collectively, "Third Party Rights"), or is sold by use of unfair competition or violates any law, statute, ordinance, administrative order, rule or regulation; or e) Vendor does not ship the Merchandise in accordance with IMS's instructions as to the carrier to be used, routing, packing or marking, or does not ship in containers that conform to IMS' specifications (or in the absence of such specifications in recognized industry standard containers that comply fully with the Consolidated Freight Shipping Classification Requirements).
- 5) IMS Rights Reserved. a) Neglect or failure of IMS to notify Vendor of the occurrence of any events listed in Section 3 above, shall not constitute acceptance of any such Merchandise or a waiver of any rights or privileges of IMS hereunder. IMS reserves the right to exercise any of its rights and privileges hereunder within one year of receipt of such Merchandise. If any such Merchandise is rejected after payment therefor, Vendor shall, upon IMS's written demand, refund IMS the invoice price for such rejected Merchandise and the Costs related thereto. IMS reserves the right to set off any amount due to Vendor against any amounts owed IMS. Upon payment of Vendor's invoice for the Merchandise, IMS will own all Merchandise exclusively for the purposes and terms stated on the PO. b) Upon delivery of the Merchandise, Vendor will obtain signed receipts from IMS, and such receipts shall serve only as acknowledgement of IMS's receipt of sealed and closed packages or containers. The actual contents and quantity and quality are subject to verification. c) IMS shall have a six-month period from the date of delivery of the Merchandise to file a claim with Vendor if any discrepancy is found between actual amount of Merchandise delivered and the amount of Merchandise listed on the face of the PO and invoiced to IMS. At IMS's option, Vendor will make immediate replacement or refund to IMS for this difference. d) If the terms of the PO do not agree with Vendor's invoice as rendered to IMS, then IMS at its option may return the Merchandise pursuant to Section 3 above or change such invoice to conform to the PO and make payment accordingly.
- 6) Vendor Representations and Warranties. Vendor expressly represents and warrants that: a) All Merchandise shall be (i) in exact accordance with the PO; and (ii) in accordance with all descriptions or specifications that IMS may furnish to Vendor, or that may be furnished to IMS by Vendor and approved in writing by IMS; b) All Merchandise shall not fall below the quality or standards of any sample or specifications provided to Vendor by IMS, or that may be supplied by Vendor and approved in writing by IMS; c) All Merchandise shall: (i) be free from defects in material and/or workmanship, merchantable and fit for its intended purpose; and (ii) comply with all applicable federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements of any applicable jurisdiction, and orders of any governmental or regulatory authority, including but not limited to: the Federal Consumer Product Safety Act; the Toy Safety Act; and the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") as amended. d) Vendor has good and merchantable title to all Merchandise; e) All Merchandise shall be free and clear of all liens and encumbrances; f) All Merchandise will be produced in compliance with requirements of the Fair Labor Standards Act, as amended; g) None of the Merchandise is misbranded or is a banned hazardous substance within the meaning of the Federal Hazardous Substances Act, as amended; h) These representations and warranties are in addition to any warranty or service guarantee offered by Vendor or implied or provided by law; i) Vendor's performance will be in compliance with Part III ("Supplier Code of Conduct") of the Application (the "Code"); and, j) These representations and warranties shall survive delivery of the Merchandise to the end users and shall not be deemed waived either by reason of IMS's acceptance of said Merchandise or by payment of any of Vendor's invoices.
- 7) IMS has all necessary rights and permissions to effect the manufacture and/or sale of the Merchandise bearing the trade dress, trade names, service marks logos and/or copyrights (the "Trademarks") owned by IMS or by IMS's customer(s) (the "Owners"). Vendor acknowledges and agrees that: a) At no time shall any rights in the Trademarks vest in Vendor, and Vendor shall not challenge or question the validity of the Trademarks, the Owner's ownership of the Trademarks, the authorization issued by the Owner(s) of the Trademarks to IMS or the terms of such authorization; b) Any artwork in either rough, comprehensive or finished form, copy, layouts, letterings, photographs, prints, sketches, designs, paste-ups, paintings, ideas, plans, models, film, hand-samples or finished samples, and any other tangible or intangible products, including but not limited to ideas, concepts, and/or products (collectively, "Works") developed by Vendor for IMS shall be considered "Works Made for Hire" within the meaning of the Copyright Act of 1976, and not works of joint authorship; c) The Works (and all rights therein, including, without limitation, copyright) belong to and shall be the sole property of IMS; d) If for any reason the Works would not be considered Works Made for Hire under applicable law, Vendor hereby agrees to assign, and transfer to IMS, its successors and assigns, the entire right, title and interest in and to the copyright in the Works and any registrations and copyright applications relating thereto and any renewals, reversions or extensions thereof, and in and to all works based upon, derived from, or incorporating the Works; e) Any unauthorized use of the Trademarks by the Vendor, its officers, directors, employees, shareholders, assigns or any person or organization under Vendor's control or direction will result in Vendor's liability to IMS and/or the Owner(s) of the Trademarks for trademark infringement, and IMS and/or the Owner(s) of the Trademarks may not have an adequate remedy at law, and shall be entitled to enforce their respective rights by an action for damages, or specific performance and injunctive or other equitable relief without the necessity of proving actual damage or posting a bond, legal and monetary relief; f) Vendor shall not produce and/or sell, or assist others in producing and/or selling any merchandise bearing the Trademarks for any other purpose, person or organization except as directed in writing by IMS; and g) Upon IMS's written request or at such time as the Vendor discontinues the production of any Merchandise, Vendor will promptly destroy or return to IMS, in the exact condition in which it was furnished to Vendor, all means of reproducing any of the Trademarks, and Vendor agrees to accept the liability for its loss or damage. If Vendor does not return the materials mentioned herein for any reason whatsoever, then Vendor shall reimburse IMS for the full replacement cost of the material not returned, or IMS may offset such costs from any payments due to Vendor.
- 8) Insurance Requirements and Indemnification. a) Vendor, at its expense, shall obtain and maintain during the Term the following policies of insurance from one or more companies with A.M. Best's rating of A-VII or better: i) Workers' Compensation with statutory benefits and Employer's Liability Insurance in Vendor's name, with limits of liability of not less than \$1,000,000 per accident or occurrence; ii) Commercial General Liability, including coverage for contractual liability, premises/operations, products and completed operations, independent contractors and advertising and personal injury, liability, with bodily injury and property damage combined limits of liability of not less than \$2,000,000 per occurrence; iii) Comprehensive Automobile and Vehicle Liability for owned, non-owned and hired vehicles, with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined; and iv) All-Risk Property coverage on personal property in the care custody and control of Vendor with limits of \$1,000,000. v) Printer's Errors & Omissions Liability with limits of \$2,000,000 covering direct and consequential damages for all work performed on behalf of IMS, either directly by the Vendor or by one of its subcontractors vi) Crime coverage not less than \$3,000,000 including property other than money and securities that has intrinsic value. b) All insurance maintained by Vendor shall be primary and non-contributory by any insurance maintained by IMS or its clients. The above insurance policies shall remain in effect continuously during the Term. Vendor shall provide IMS with 30 days' notice of any cancellation or change in the conditions of coverage. Vendor will annually provide IMS with a Certificate of Insurance naming IMS and IMS' client as additional insureds on Vendor's Commercial General Liability and Automobile Liability policies. c) Vendor shall, at its own expense, protect, defend, indemnify and hold IMS, its affiliates, directors, members, officers, employees and agents harmless from and against any and all claims, demands, suits, settlements, causes of action, judgments, liabilities, losses, damages, fines, penalties, expenses, reasonable legal fees and costs arising out of, or directly or indirectly related to any and all claims arising from Vendor's performance under a PO, including, but not limited to: i) Any defect in the Merchandise and any alleged injury or loss resulting from allegedly defective Merchandise; ii) Any alleged infringement of any Third-Party Rights by Merchandise; or iii) Any breach of any representation or warranty contained in this Agreement. d) All insurance maintained by Vendor shall be primary and non-contributory by any insurance maintained by IMS or its clients. The above insurance policies shall remain in effect continuously during the Term. Vendor shall provide IMS with 30 days' notice of any cancellation or change in the conditions of coverage. Vendor will annually provide IMS with a Certificate of Insurance naming IMS and IMS' client as additional insureds on Vendor's Commercial General Liability and Automobile Liability policies.
- 9) Term and Termination. a) This Agreement shall be effective upon IMS' approval of Vendor and IMS' execution of the Application and shall continue to apply to PO's issued by IMS until terminated as provided herein (the "Term"). b) IMS may terminate this Agreement: i) Upon 30 days' notice to Vendor if Vendor is in breach or default of any term or condition of these Terms, provided that such breach or default is not cured within said 30-day period; ii) Immediately if there is any express assignment of this Agreement by Vendor, any change in control of Vendor, or any assignment by Vendor by merger or otherwise by operation of law; or iii) Immediately if Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event of a termination, IMS, at its sole option, may terminate any outstanding PO(s): (A) on the effective date of termination and pay Vendor for amounts due through the effective date of termination, or (B) after satisfactory completion of the PO(s) and pay Vendor for amounts due under the PO(s).
- 10) Entire Agreement. With the exception any specifications previously furnished to Vendor by IMS, these Terms and the terms and conditions on the front of the PO (together with the Application), constitute the entire agreement between the parties and supersede all prior negotiations with regard to the Merchandise as well as any usages of the trade courses of dealing, and all terms of a sales order, acknowledgment or other form of Vendor purporting to modify, vary, or explain these Terms or a PO, unless specifically accepted in writing by IMS. In the event these Terms conflict with the terms of a PO, the terms of the PO shall govern.
- 11) Audits and Assessments. Vendor shall keep accurate and complete records relating to the Merchandise. Vendor shall allow IMS to (i) audit and examine Vendor's books and records relating to this Agreement. IMS reserves the right to audit compliance with these Terms and its Code and (ii) conduct facility inspections that include employee interviews and a review of Vendor records and business practices. Such audits are conducted by IMS or its approved auditing firm. If an audit identifies a violation of these Terms or the Code, Vendor shall act promptly to correct the situation to IMS's satisfaction.
- 12) No Waiver. IMS's failure to insist on performance of any term or condition in these Terms or a PO, or to exercise any right or privilege in these Terms or a PO, shall not be construed as a waiver of any such term, condition, right or privilege.
- 13) Choice of Law. This Agreement and all PO's shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of Illinois. The rights and obligations under this Agreement and all PO's will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The parties agree that any action or proceeding arising out of or related to this Agreement or a PO shall be brought only in the Circuit Court of Cook County, Illinois or the United States District Court, Northern District of Illinois, Eastern Division, and the parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves.
- 14) Force Majeure. IMS may delay delivery and/or acceptance or cancel any outstanding PO(s) occasioned by causes beyond its control.
- 15) Confidentiality. All nonpublic information furnished by IMS to Vendor shall be treated as secret and confidential and no portion of it shall be used for any purposes other than as provided under these Terms or disclosed to others without the express written-consent of IMS except to the extent that such information was or becomes generally available to the public other than as a result of disclosure by Vendor or was or later becomes available to Vendor from a source other than IMS. In addition, Vendor may disclose confidential information to the extent such disclosure is required by law or valid order of a court or other governmental authority; provided however, that Vendor shall first have given written notice of the required disclosure to IMS as soon as practicable in order to afford IMS an opportunity to obtain a protective order.
- 16) Independent Contractor. Vendor is an independent contractor and these Terms do not imply a joint venture, partnership, or principal-agent relationship between the parties. Vendor has no authority to bind IMS by contract or otherwise without IMS's prior written authorization.
- 17) Severability and No Waiver. In the event that any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, all other terms and conditions shall remain in full force and effect. The failure to insist on performance of any term or condition in this Agreement, or to exercise any right or privilege in this Agreement, shall not be construed as a waiver of any such term, condition, right or privilege.
- 18) Assignment. This Agreement is personal to Vendor and shall not be assigned or transferred (whether by change of control, operation of law or otherwise), mortgaged, sublicensed, subcontracted, delegated or otherwise encumbered by Vendor unless expressly agreed to in advance by IMS in writing.
- 19) Attorneys' Fees and Costs. In the event of a legal dispute between the parties relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the other party.



Work Order 08231655 W

PURCHASE ORDER

DATE	12/04/23
PO. NUMBER	33818556 - 000 OS
PAGE NO.	2

STEVE SHARP
 C/O IMS
 8338 Austin Ave.
 MORTON GROVE IL 60053
 (847) 583-3915

VENDOR 1414102 ISEE STORE INNOVATIONS, LLC 3937 PARK AVE 63110 ST. LOUIS ST. LOUIS MO 631109	S H I P T O	FASTPAK 10100 58TH PLACE ATTN: RECEIVING DEPT. KENOSHA WI 53144
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PO. DATE 11/13/23	FREIGHT TERMS
REQ DELY DATE 01/09/24 TC	ORDER PLACED WITH
SPECIAL INSTRUCTIONS Job 123942	SHIP VIA

USD

DESCRIPTION / ITEM NUMBER	QUANTITY ORDERED	U/M	UNIT COST	U/M	AMOUNT
Labeling: Label each carton with SKU#, item description and qty. Minimum QTY: PATENTED ITEM Item Complexity: LOW					
Cali Cocktails Gravity Feed Shelf Roller FPO CKT24001DSP Phase: Decorated Materials	386.00	CT	1.75	CT	675.50

TERMS: NET 90 DAYS	TOTAL ORDER 7,166.80
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State tax registration number available upon request.
 Our P.O. Number must appear on all invoices, packing slips and bills of lading.

Shipping of the merchandise described above shall constitute the sole means of effecting an agreement between the parties. Such agreement shall be governed by the terms and conditions printed on the reverse side of this purchase order.

BUYER: STEVE SHARP

PURCHASE ORDER TERMS AND CONDITIONS
INTEGRATED MERCHANDISING SOLUTIONS LLC ("IMS")

SHIPMENT OF MERCHANDISE OR PROVISION OF SERVICES (the "Merchandise") PURSUANT TO A PURCHASE ORDER IS SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH BELOW (the "Terms" or the "Agreement"). MERCHANDISE NOT FULLY MEETING SPECIFICATIONS OR SHIPPED CONTRARY TO THE PURCHASE ORDER, WILL BE RETURNED OR HELD AT VENDOR'S RISK AND EXPENSE. PRICE MUST NOT BE HIGHER THAN LAST INVOICED OR QUOTED WITHOUT IMS'S PRIOR WRITTEN AUTHORITY.

- 1) General. IMS may from time to time during the Term, as defined below, issue Purchase Orders ("PO's") to Vendor for the purchase of Merchandise specified on the PO. Vendor will deliver Merchandise according to all descriptions, specifications and terms contained herein, listed on the face of the PO, as otherwise provided to Vendor by IMS, and subject to the provisions of these Terms and the Vendor Validation Application (the "Application"), which is expressly incorporated herein by reference.
- 2) Vendor Acceptance; Modifications. Vendor Acceptance. A PO is subject to withdrawal by IMS at any time prior to Vendor's acceptance of the PO. Vendor shall be deemed to have accepted a PO when: (i) IMS receives written notice via email, facsimile or mail that Vendor accepts the PO; (ii) IMS receives an oral acceptance via telephone or voicemail; (iii) Vendor ships the Merchandise; or (iv) IMS accepts delivery of the Merchandise. Upon Vendor's acceptance of a PO, these Terms and any additional terms and conditions set forth in the PO shall constitute the entire agreement relating to the purchase of the Merchandise.
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- 3) Cancellation and Returns. IMS may reject or cancel the whole or any part of any PO, and return or hold the Merchandise involved at Vendor's expense for the following reasons and Vendor shall bear all transportation costs and all expenses, including but not limited to, costs of cover, unpacking, examining, repacking, storing and reshipping (collectively, "Costs") relating to any rejected or canceled Merchandise, if: a) Vendor does not deliver any part of the Merchandise; b) Vendor delivers defective Merchandise or Merchandise that otherwise does not comply with IMS's specifications, including but not limited to production overruns or underruns; c) Because time is of the essence applies to all delivery dates, Vendor delivers any Merchandise after the date indicated as "delivery date," unless written authorization is obtained from IMS not less than seventy-two (72) hours prior to shipment; d) It is alleged that any of the Merchandise, or the manufacture, handling or sale of such Merchandise infringes any patent, trademark, copyright, trade secret, or other third party right (collectively, "Third Party Rights"), or is sold by use of unfair competition or violates any law, statute, ordinance, administrative order, rule or regulation; or e) Vendor does not ship the Merchandise in accordance with IMS's instructions as to the carrier to be used, routing, packing or marking, or does not ship in containers that conform to IMS' specifications (or in the absence of such specifications in recognized industry standard containers that comply fully with the Consolidated Freight Shipping Classification Requirements).
- 4) IMS Rights Reserved. a) Neglect or failure of IMS to notify Vendor of the occurrence of any events listed in Section 3 above, shall not constitute acceptance of any such Merchandise or a waiver of any rights or privileges of IMS hereunder. IMS reserves the right to exercise any of its rights and privileges hereunder within one year of receipt of such Merchandise. If any such Merchandise is rejected after payment therefor, Vendor shall, upon IMS's written demand, refund IMS the invoice price for such rejected Merchandise and the Costs related thereto. IMS reserves the right to set off any amount due to Vendor against any amounts owed IMS. Upon payment of Vendor's invoice for the Merchandise, IMS will own all Merchandise exclusively for the purposes and terms stated on the PO. b) Upon delivery of the Merchandise, Vendor will obtain signed receipts from IMS, and such receipts shall serve only as acknowledgement of IMS's receipt of sealed and closed packages or containers. The actual contents and quantity and quality are subject to verification. c) IMS shall have a six-month period from the date of delivery of the Merchandise to file a claim with Vendor if any discrepancy is found between actual amount of Merchandise delivered and the amount of Merchandise listed on the face of the PO and invoiced to IMS. At IMS's option, Vendor will make immediate replacement or refund to IMS for this difference. d) If the terms of the PO do not agree with Vendor's invoice as rendered to IMS, then IMS at its option may return the Merchandise pursuant to Section 3 above or change such invoice to conform to the PO and make payment accordingly.
- 5) Vendor Representations and Warranties. Vendor expressly represents and warrants that: a) All Merchandise shall be (i) in exact accordance with the PO; and (ii) in accordance with all descriptions or specifications that IMS may furnish to Vendor, or that may be furnished to IMS by Vendor and approved in writing by IMS; b) All Merchandise shall not fall below the quality or standards of any sample or specifications provided to Vendor by IMS, or that may be supplied by Vendor and approved in writing by IMS; c) All Merchandise shall: (i) be free from defects in material and/or workmanship, merchantable and fit for its intended purpose; and (ii) comply with all applicable federal, state, and local laws, codes, statutes, ordinances, rules, regulations, and requirements of any applicable jurisdiction, and orders of any governmental or regulatory authority, including but not limited to: the Federal Consumer Product Safety Act; the Toy Safety Act; and the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") as amended. d) Vendor has good and merchantable title to all Merchandise; e) All Merchandise shall be free and clear of all liens and encumbrances; f) All Merchandise will be produced in compliance with requirements of the Fair Labor Standards Act, as amended; g) None of the Merchandise is misbranded or is a banned hazardous substance within the meaning of the Federal Hazardous Substances Act, as amended; h) These representations and warranties are in addition to any warranty or service guarantee offered by Vendor or implied or provided by law; i) Vendor's performance will be in compliance with Part III ("Supplier Code of Conduct") of the Application (the "Code"); and, j) These representations and warranties shall survive delivery of the Merchandise to the end users and shall not be deemed waived either by reason of IMS's acceptance of said Merchandise or by payment of any of Vendor's invoices.
- 6) IMS has all necessary rights and permissions to effect the manufacture and/or sale of the Merchandise bearing the trade dress, trade names, service marks logos and/or copyrights (the "Trademarks") owned by IMS or by IMS's customer(s) (the "Owners"). Vendor acknowledges and agrees that: a) At no time shall any rights in the Trademarks vest in Vendor, and Vendor shall not challenge or question the validity of the Trademarks, the Owner's ownership of the Trademarks, the authorization issued by the Owner(s) of the Trademarks to IMS or the terms of such authorization; b) Any artwork in either rough, comprehensive or finished form, copy, layouts, letterings, photographs, prints, sketches, designs, paste-ups, paintings, ideas, plans, models, film, hand-samples or finished samples, and any other tangible or intangible products, including but not limited to ideas, concepts, and/or products (collectively, "Works") developed by Vendor for IMS shall be considered "Works Made for Hire" within the meaning of the Copyright Act of 1976, and not works of joint authorship; c) The Works (and all rights therein, including, without limitation, copyright) belong to and shall be the sole property of IMS; d) If for any reason the Works would not be considered Works Made for Hire under applicable law, Vendor hereby agrees to assign, and transfer to IMS, its successors and assigns, the entire right, title and interest in and to the copyright in the Works and any registrations and copyright applications relating thereto and any renewals, reversions or extensions thereof, and in and to all works based upon, derived from, or incorporating the Works; e) Any unauthorized use of the Trademarks by the Vendor, its officers, directors, employees, shareholders, assigns or any person or organization under Vendor's control or direction will result in Vendor's liability to IMS and/or the Owner(s) of the Trademarks for trademark infringement, and IMS and/or the Owner(s) of the Trademarks may not have an adequate remedy at law, and shall be entitled to enforce their respective rights by an action for damages, or specific performance and injunctive or other equitable relief without the necessity of proving actual damage or posting a bond, legal and monetary relief; f) Vendor shall not produce and/or sell, or assist others in producing and/or selling any merchandise bearing the Trademarks for any other purpose, person or organization except as directed in writing by IMS; and g) Upon IMS's written request or at such time as the Vendor discontinues the production of any Merchandise, Vendor will promptly destroy or return to IMS, in the exact condition in which it was furnished to Vendor, all means of reproducing any of the Trademarks, and Vendor agrees to accept the liability for its loss or damage. If Vendor does not return the materials mentioned herein for any reason whatsoever, then Vendor shall reimburse IMS for the full replacement cost of the material not returned, or IMS may offset such costs from any payments due to Vendor.
- 7) Insurance Requirements and Indemnification. a) Vendor, at its expense, shall obtain and maintain during the Term the following policies of insurance from one or more companies with A.M. Best's rating of A-VII or better: i) Workers' Compensation with statutory benefits and Employer's Liability Insurance in Vendor's name, with limits of liability of not less than \$1,000,000 per accident or occurrence; ii) Commercial General Liability, including coverage for contractual liability, premises/operations, products and completed operations, independent contractors and advertising and personal injury, liability, with bodily injury and property damage combined limits of liability of not less than \$2,000,000 per occurrence; iii) Comprehensive Automobile and Vehicle Liability for owned, non-owned and hired vehicles, with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage combined; and iv) All-Risk Property coverage on personal property in the care custody and control of Vendor with limits of \$1,000,000. v) Printer's Errors & Omissions Liability with limits of \$2,000,000 covering direct and consequential damages for all work performed on behalf of IMS, either directly by the Vendor or by one of its subcontractors vi) Crime coverage not less than \$3,000,000 including property other than money and securities that has intrinsic value. b) All insurance maintained by Vendor shall be primary and non-contributory by any insurance maintained by IMS or its clients. The above insurance policies shall remain in effect continuously during the Term. Vendor shall provide IMS with 30 days' notice of any cancellation or change in the conditions of coverage. Vendor will annually provide IMS with a Certificate of Insurance naming IMS and IMS' client as additional insureds on Vendor's Commercial General Liability and Automobile Liability policies. c) Vendor shall, at its own expense, protect, defend, indemnify and hold IMS, its affiliates, directors, members, officers, employees and agents harmless from and against any and all claims, demands, suits, settlements, causes of action, judgments, liabilities, losses, damages, fines, penalties, expenses, reasonable legal fees and costs arising out of, or directly or indirectly related to any and all claims arising from Vendor's performance under a PO, including, but not limited to: i) Any defect in the Merchandise and any alleged injury or loss resulting from allegedly defective Merchandise; ii) Any alleged infringement of any Third-Party Rights by Merchandise; or iii) Any breach of any representation or warranty contained in this Agreement. d) All insurance maintained by Vendor shall be primary and non-contributory by any insurance maintained by IMS or its clients. The above insurance policies shall remain in effect continuously during the Term. Vendor shall provide IMS with 30 days' notice of any cancellation or change in the conditions of coverage. Vendor will annually provide IMS with a Certificate of Insurance naming IMS and IMS' client as additional insureds on Vendor's Commercial General Liability and Automobile Liability policies.
- 8) Term and Termination. a) This Agreement shall be effective upon IMS' approval of Vendor and IMS' execution of the Application and shall continue to apply to PO's issued by IMS until terminated as provided herein (the "Term"). b) IMS may terminate this Agreement: i) Upon 30 days' notice to Vendor if Vendor is in breach or default of any term or condition of these Terms, provided that such breach or default is not cured within said 30-day period; ii) Immediately if there is any express assignment of this Agreement by Vendor, any change in control of Vendor, or any assignment by Vendor by merger or otherwise by operation of law; or iii) Immediately if Vendor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise. In the event of a termination, IMS, at its sole option, may terminate any outstanding PO(s): (A) on the effective date of termination and pay Vendor for amounts due through the effective date of termination, or (B) after satisfactory completion of the PO(s) and pay Vendor for amounts due under the PO(s).
- 9) Entire Agreement. With the exception any specifications previously furnished to Vendor by IMS, these Terms and the terms and conditions on the front of the PO (together with the Application), constitute the entire agreement between the parties and supersede all prior negotiations with regard to the Merchandise as well as any usages of the trade courses of dealing, and all terms of a sales order, acknowledgment or other form of Vendor purporting to modify, vary, or explain these Terms or a PO, unless specifically accepted in writing by IMS. In the event these Terms conflict with the terms of a PO, the terms of the PO shall govern.
- 10) Audits and Assessments. Vendor shall keep accurate and complete records relating to the Merchandise. Vendor shall allow IMS to (i) audit and examine Vendor's books and records relating to this Agreement. IMS reserves the right to audit compliance with these Terms and its Code and (ii) conduct facility inspections that include employee interviews and a review of Vendor records and business practices. Such audits are conducted by IMS or its approved auditing firm. If an audit identifies a violation of these Terms or the Code, Vendor shall act promptly to correct the situation to IMS's satisfaction.
- 11) No Waiver. IMS's failure to insist on performance of any term or condition in these Terms or a PO, or to exercise any right or privilege in these Terms or a PO, shall not be construed as a waiver of any such term, condition, right or privilege.
- 12) Choice of Law. This Agreement and all PO's shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of Illinois. The rights and obligations under this Agreement and all PO's will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The parties agree that any action or proceeding arising out of or related to this Agreement or a PO shall be brought only in the Circuit Court of Cook County, Illinois or the United States District Court, Northern District of Illinois, Eastern Division, and the parties hereby consent to such venue and to the jurisdiction of such courts over such proceeding and themselves.
- 13) Force Majeure. IMS may delay delivery and/or acceptance or cancel any outstanding PO(s) occasioned by causes beyond its control.
- 14) Confidentiality. All nonpublic information furnished by IMS to Vendor shall be treated as secret and confidential and no portion of it shall be used for any purposes other than as provided under these Terms or disclosed to others without the express written-consent of IMS except to the extent that such information was or becomes generally available to the public other than as a result of disclosure by Vendor or was or later becomes available to Vendor from a source other than IMS. In addition, Vendor may disclose confidential information to the extent such disclosure is required by law or valid order of a court or other governmental authority; provided however, that Vendor shall first have given written notice of the required disclosure to IMS as soon as practicable in order to afford IMS an opportunity to obtain a protective order.
- 15) Independent Contractor. Vendor is an independent contractor and these Terms do not imply a joint venture, partnership, or principal-agent relationship between the parties. Vendor has no authority to bind IMS by contract or otherwise without IMS's prior written authorization.
- 16) Severability and No Waiver. In the event that any provision of these Terms is held invalid or unenforceable by a court of competent jurisdiction, all other terms and conditions shall remain in full force and effect. The failure to insist on performance of any term or condition in this Agreement, or to exercise any right or privilege in this Agreement, shall not be construed as a waiver of any such term, condition, right or privilege.
- 17) Assignment. This Agreement is personal to Vendor and shall not be assigned or transferred (whether by change of control, operation of law or otherwise), mortgaged, sublicensed, subcontracted, delegated or otherwise encumbered by Vendor unless expressly agreed to in advance by IMS in writing.
- 18) Attorneys' Fees and Costs. In the event of a legal dispute between the parties relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the other party.