

Purchase Order Terms & Conditions (Goods)

BY AGREEING TO SELL PRODUCTS SUBJECT TO A PURCHASE REQUEST FROM MUCCI YOU ("SUPPLIER") AGREE TO THE TERMS OF THIS PURCHASE ORDER ("PO" or ORDER) FOR GOODS. **IF YOU DO NOT AGREE, DO NOT ACCEPT (SEE SECTION 2).**

- TERMS.** Supplier shall provide the goods or products (the "Goods") described on the first page of this Order to Mucci International Marketing, Inc. ("Company") in accordance with all terms of this Order, including these terms and conditions below (collectively, the "Order" or "PO").
- ACCEPTANCE.** This PO governs the purchase and sale of Goods if (i) a signed acknowledgement is provided by Supplier, (ii) Supplier fulfills any part of this PO, (iii) accepts any payments, or (iv) where its conduct indicates a transaction pertaining to the subject matter of such PO. SUPPLIER HEREBY ACKNOWLEDGES AND AGREES THAT IT IS A CONDITION OF THIS PO THAT ANY PROVISIONS PRINTED OR OTHERWISE INCLUDED IN ANY ACKNOWLEDGEMENT HEREOF RECEIVED BY COMPANY FROM SUPPLIER, WHETHER INCONSISTENT WITH OR IN ADDITION TO THE TERMS AND CONDITIONS STATED HEREIN, AND/OR ANY ALTERATION MADE BY SUPPLIER IN THIS PO, SHALL BE VOID AND OF NO FORCE AND EFFECT, AND SUPPLIER HEREBY ALSO ACKNOWLEDGES AND AGREES THAT ANY SUCH PROVISIONS IN SUPPLIER'S ACKNOWLEDGEMENT OR ANY SUCH ALTERATIONS IN THIS PO SHALL NOT CONSTITUTE A PART OF THIS PO.
- TERM; TERMINATION.** This PO will be effective as of the date of the last signature below and will remain in effect for the term of the warranty (the "Term"). Company may terminate this PO for its convenience at any time without penalty upon written notice to Supplier. If the PO is terminated for convenience, then the termination date shall be effective on the date notice is given, unless otherwise mutually agreed to by the parties in writing. Company shall pay for any Goods delivered in accordance with the terms of this PO prior to the date that termination becomes effective. If the PO is terminated before delivery of Goods and no payment for the PO has yet been made by Company, such PO shall be considered terminated and closed unless Company instructs otherwise in writing. If a Order is terminated before delivery of all Goods, but after payment by Company, unless Company has requested and received a refund with respect to the undelivered Goods, Company shall be entitled to the timely delivery of all Goods for which it has paid prior to the effective date of the termination. Without limiting the generality of the foregoing, Company reserves the right to cancel all or any part of the undelivered portion of the Order if Supplier does not make delivery as provided in this Order or if Supplier breaches any of the terms herein, including the warranties of Supplier. The acceptance of the Goods or partial performance by Company hereunder after a default or breach by Supplier hereunder shall not affect the right of Company to cancel or terminate any of its additional obligations hereunder or otherwise affect Company's rights and remedies. Company shall also have the right to terminate this Order or any part hereof in the event of the happening of any of the following: insolvency of Supplier; filing of a petition in bankruptcy by or on behalf of Supplier; the appointment of a receiver or trustee for Supplier; or the execution by Supplier of an assignment for the benefit of creditors. The remedies provided in this Section shall be cumulative and in addition to any other remedies provided in law or equity.
- CONFIDENTIALITY.** All specifications, documents, artwork, or drawings delivered by Company to Supplier, and any other non-public information Company discloses to Supplier, remains Company's property. The information is provided to Supplier solely for the purpose of Supplier's performance of the PO and on the express condition that neither the PO nor the information contained therein or provided in connection therewith shall be disclosed to third parties or used for any purpose other than in connection with the PO without Company's prior express written consent, which consent shall be at Company's sole discretion. Company shall have the right to share Supplier's proprietary or confidential information to Company's Affiliates and related entities. Company reserves the right to request that Supplier return all such information to Company or destroy it. Supplier's obligations under this paragraph shall survive the cancellation, termination or other completion of the PO.
- WARRANTY.** Unless otherwise agreed by the parties in writing, Supplier represents and warrants that (a) all Goods provided will be new and will not be used or refurbished; (b) all Goods delivered (i) shall be free from defects in design, materials and workmanship, (ii) shall be merchantable and of good quality and workmanship, (iii) shall be fit for the purpose for which they are intended, and (iv) shall conform to all applicable descriptions, drawings, instructions, samples or other specifications; (c) Supplier has good and valid title to the Goods and the Goods are free and clear of all liens and encumbrances; and (d) with respect to any third-party software included within the Goods (including any open source software), Supplier has all rights necessary to provide such software to and/or use such software for the benefit of Company without Company incurring additional license fees or other costs. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. If Company identifies a warranty problem with the Goods during the warranty period (which shall be three (3) years from the Delivery Date (defined below)), Company shall promptly notify Supplier of such problems and may, at its option, either return for credit or refund or require prompt correction or replacement of the defective or non-conforming Goods or any part thereof. If Supplier fails to correct defects in or replace non-conforming Goods promptly, Company may, after reasonable notice to Supplier, make such corrections or effect cover at Supplier's expense. The return to Supplier of any such non-conforming Goods shall be at Supplier's sole risk and expense. Replacement and repaired Goods shall be warranted as set forth herein. Such warranties, together with Supplier's additional warranties and guarantees, if any, shall survive inspection, test, acceptance and payment for the Goods.
- PRICE.** This PO must not be filled at a higher price than shown on the PO. Unless another currency is specified on the PO, all monetary amounts are deemed to be expressed in Canadian dollars. The price shall not in any event be higher than the lowest price Supplier provides to any of Supplier's other customers ordering similar quantities, after taking into consideration all rebates, discounts and allowances. In the event Supplier breaches this warranty, the price of the Goods shall be reduced accordingly, retroactive to the date of such breach. Unless otherwise provided on the Order, delivery of Goods shall be f.o.b. destination. Supplier's prices include any and all related customs duties. Under no circumstances shall Company be responsible for the payment of any tariffs, duties, customs clearance costs, or other import/export related costs and any attempt by Supplier that shifts such obligation on Company shall be null and void.
- TAXES.** Except as otherwise provided in this PO, the stated price includes all applicable federal, state and local taxes in effect on the date of this PO, if any, and Supplier hereby accepts liability for the actual payment of all such income related taxes. Supplier agrees to indemnify and hold Company harmless from penalties or fees imposed on Company as a result of incorrect calculation, billing, or remittance of taxes by Supplier. If Company is required by the law of any jurisdiction to withhold any taxes, duties, fees, levies, or charges ("Withholding Taxes") from any fees or other charges (including reimbursement of expenses) paid to Supplier, Company will be entitled to deduct the amount of such Withholding Taxes from the amount

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of such fees or other charges (including reimbursement of expenses). If Supplier is either exempt from withholding or entitled to a reduced rate of withholding pursuant to a tax treaty or other applicable law and provides Company with adequate written documentation of such exemption from or reduced rate of withholding, Company will be entitled to withhold only such Withholding Taxes from which Supplier is not exempt. In case of doubt by Company as to Company's liability for any such tax, Supplier shall allow Company, at Company's expense, to assume control of any litigation or proceeding relating to the determination and settlement of such tax. Company shall, upon final settlement of such litigation and proceedings, reimburse Supplier for any tax determined to be owed by Company including in the amount to be reimbursed, any reasonable interest charges and penalties accruing thereon.

8. **INVOICES.** Supplier agrees to issue invoices for all Goods provided within sixty (60) days of the date of delivery of such Goods (the "Delivery Date") and in accordance with Company's invoicing guidance as provided from time to time. All invoices shall comply with the requirements of each relevant taxing authority and shall contain data and registration numbers that will enable Company to obtain appropriate credit for any taxes charged. Failure to comply with the above may result in delayed payment, returned invoices or non-payment as described in Section 9 (Payment) below.
9. **PAYMENT.** As full consideration for Supplier's satisfactory provision of Goods, invoices submitted by Supplier to Company in accordance with the PO will be paid (except amounts in dispute or subject to set off) within the number of days set forth on the cover page of this PO. If the cover page of this PO is silent as to payment timeline, undisputed invoices submitted to Company shall be paid by Supplier within sixty (60) days of Company's receipt of the invoice. Company's payment of any invoice shall constitute full and complete satisfaction of any and all actual and potential fees for the Goods covered by the invoice. Company may set-off any amount due from Supplier to Company or any affiliated company of Company, whether or not under this PO, against any amount due to Supplier hereunder.
10. **FORCE MAJEURE.** If by reason of fire, earthquake, flood, explosion, accident, difference with or inability to secure workmen, lack of facilities, act of God or of any public enemy, voluntary or involuntary compliance with any valid law, Order, regulation, request, or recommendation of any government agency or authority, lack of transportation, or other cause beyond the control of Company, whether or not of the kind or nature hereinbefore specified, Company is delayed in whole or in part from taking any delivery or deliveries of the Goods, or otherwise performing hereunder, then (i) this PO shall automatically be suspended, in whole or in part, including any deliveries of the Goods during the continuance of and to the extent of such circumstances or (ii) by giving written notice to Supplier, Company may cancel or terminate this PO, in whole or in part, without penalty, as to any undelivered portion of the Goods. Notwithstanding any statements to the contrary, in no event shall an increase in tariffs, duties, customs clearance costs or other import/export related activity or any economic hardship be deemed a force majeure event, or a basis for otherwise adjusting Supplier's pricing or excusing Supplier's obligations hereunder.
11. **INDEMNITY.** Supplier, at its own expense, shall indemnify, defend, and hold harmless Company, its Affiliates and assigns, and its and their directors, officers, members, managers, partners, shareholders, employees, advisors and agents from and against any third party claim, loss, demand, cause of action, debt or liability, including attorneys' fees, arising out of or related to: (i) any violation of applicable laws; (ii) actual or alleged violation or misappropriation of any intellectual property right of a third party; (iii) any breach or alleged breach by Supplier or Supplier's Personnel of any of any representation, warranty, covenant, agreement, provision or obligation under this PO; (iv) any willful, intentional or negligent action or failure to act by Supplier or Supplier's Personnel; (v) personal injuries (including death) and property damage caused by or arising from use of the Goods including without limitation, any injuries or damage arising out of defective design or workmanship of the Goods; and (vi) any and all claims and/or liens based upon the furnishing of labor and/or materials in connection with the Goods.
12. **INSURANCE.** Supplier shall maintain the insurance coverages (or such greater coverages as may be agreed): (a) Commercial General or Garage Liability Insurance covering liability for bodily injury or property damage arising from Supplier's work under this PO in the amount of not less than \$1,000,000 per loss. Policy will include contractual liability, products liability, completed operations liability and personal injury coverages.; (b) If Supplier's scope of services involves operating vehicles, Business Auto or Garage Liability Insurance covering the use of Supplier's owned, non-owned and hired vehicles in the amount of not less than \$1,000,000 per accident.; and (c) If applicable, as determined by Company in its sole discretion, (i) Workers Compensation insurance, as required by statute and Employers Liability Insurance in the amount of at least \$500,000 per accident.; (ii) Excess or Umbrella Liability Insurance providing coverage in addition to the above required general and auto liability insurance in the amount of at least \$2,000,000 per loss.; and/or (iii) Professional Liability insurance covering liability for errors and omissions arising out of Supplier's or anyone acting on behalf of Supplier's performance of its obligations pursuant to this PO, in an amount not less than \$2,000,000 per loss, which policy shall include coverage for negligent acts and errors and omissions arising out of or related to the furnishing of Goods by Supplier. The general and auto liability policy(ies) shall name Company as an additional insured. Upon Company's written request, Supplier shall provide Company with a certificate(s) of insurance evidencing the above-noted insurance requirements and specifying that Company will receive thirty (30) days' advance notice of any termination or cancellation in coverage. Supplier's carrier shall have a minimum A.M. Best's rating of A-. Supplier's insurance will apply as primary and non-contributory for any claims arising out of Supplier's work under this PO. Supplier shall be responsible for the payment of any deductibles or retentions within its insurance. These coverages shall not limit or restrict Supplier's indemnification obligations outlined in this PO.
13. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL COMPANY BE LIABLE TO SUPPLIER OR ANY THIRD PARTY, IN CONTRACT, TORT OR OTHERWISE, FOR ANY LOSS OF PROFITS OR BUSINESS, OR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING FROM OR AS A RESULT OF THIS PURCHASE ORDER OR ANY OTHER AGREEMENT BETWEEN THE PARTIES RELATING TO THE GOODS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **PACKAGING.** Unless otherwise specified in the PO, the Goods shall be packed, packaged, marked, and otherwise prepared for shipment in accordance with Company's instructions where applicable and in accordance with good commercial practice.
15. **RISK OF LOSS.** Regardless of the method of shipment used, Supplier shall deliver all Goods to the location(s) specified in the PO at Supplier's own risk and shall bear the risk of loss, destruction, or damage until the items are delivered to and accepted by Company.

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16. **DELIVERY.** Time is of the essence. Supplier shall ship and deliver the Goods on the date or dates specified in this PO, unless prior written approval of any change in such date or dates is given by Company. Company may from time to time change the delivery schedule or direct temporary suspension of scheduled shipments. In the event Supplier fails to deliver the Goods within the time specified, in addition to any termination rights set out herein, Company may, at its option and without limiting its remedies, decline to accept the Goods and terminate the PO. Supplier shall comply with Company's shipping, delivery, installation and related policies and procedures as provided separately to Supplier. Quantities must equal the exact amounts identified in the PO and no partial shipments or runt cartons, changes, or substitutions in specifications may be made without Company's prior written approval. Company's acceptance of late shipments or partial shipments shall not constitute a waiver of any of Company's rights to collect damages for Goods not delivered or for late delivery. Supplier shall report to Company any delays immediately as they become known to Supplier. Company reserves the right to cancel the PO and effect cover if Supplier cannot comply with the schedule(s) indicated in this PO. Company may return over shipments to Supplier at Supplier's expense for all packing, handling, sorting and transportation. Company may from time to time, and with reasonable notice, suspend schedules or such shipment releases. No charges for unauthorized transportation will be allowed and any excess charges resulting from the use of unauthorized transportation will be charged back to Supplier. If it becomes necessary for Supplier to ship by a more expensive shipping method, Supplier shall pay any resulting premium transportation cost.
17. **INSPECTION.** All Goods received are subject to Company's inspection and acceptance or rejection. Company's payment shall not constitute acceptance. Company retains the right to inspect, and, if applicable, test, the Goods and to reject any or all of the Goods which are in Company's judgment defective. Company also retains the right to inspect Supplier's manufacturing operations, handling and storage of Goods and raw material, including the equipment used to manufacture the Goods. Company will give Supplier reasonable notice of any planned Supplier site visit. No inspection or test made prior to final acceptance (including but not limited to multi-phased agile development projects requiring multiple approvals prior to the delivery of a final deliverable) shall relieve Supplier of liability for defects or other failure to meet the requirements of this PO. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. Company's failure to inspect and accept or reject the Goods shall neither relieve Supplier from responsibility for such Goods that are not in accordance with the Order requirements nor impose liability on Company for such Goods. Further, partial or full payment for any Goods shall not constitute final acceptance unless and until Company has performed the inspection set forth in this Section and communicated in writing or electronically its acceptance to Supplier. If any of the Goods are found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this PO, Company, in addition to any other rights which it may have, may at its option reject and return such Goods at Supplier's expense as set forth below. In addition to Company's other rights, Company may charge Supplier all expenses of unpacking, examining, repacking, and reshipping such Goods. In the event Company receives Goods whose defects or nonconformity is not apparent on examination, resulting in deterioration of Company's finished product or any other damages to Company, Company reserves the right to require the replacement, as well as payment of any resulting damages. When a shipment is rejected based upon Company's inspection, and such rejection increases the risk of jeopardizing Company's production schedules by reason of the fact that at least some of the Goods are necessary to meet such production schedules, then Company, at its option, may charge Supplier for the reasonable costs of an increased level of inspection up to and including inspection of each of the Goods comprising such shipment.
18. **REJECTED SHIPMENTS.** If the Goods shipped or to be shipped are rejected in whole or in part by Company by reason of Supplier's failure to comply with any of the terms of this PO, Company, after notifying Supplier, may either (a) return the rejected portion of the Goods to Supplier at Supplier's expense; (b) hold the same for such disposal as Supplier shall indicate, in each of case (a) and (b), without invalidating the remainder of the PO; or (c) reject the entire shipment of Goods and cancel this PO for any undelivered balance of the Goods. If the Goods shipped or to be shipped hereunder are rejected as provided above, Company may purchase the same or similar goods elsewhere and charge Supplier with any loss or damage sustained by Company including, without limitation, any difference between the price paid by Company for such goods and the price specified in this PO, plus all costs of collecting the same including, without limitation, reasonable attorneys' fees and court costs. Company shall not be obligated to pay for any Goods shipped which Company rejects as set forth herein.
19. **ASSIGNMENT.** Supplier may not assign, delegate, subcontract, or transfer this PO, the work required to be done or any payments to be made or received hereunder without Company's prior written approval, which may be withheld at Company's sole discretion. In the event of agreed delegation or subcontracting, Supplier shall continue to be liable with respect to all of the obligations and liabilities assumed by it hereunder and hereby guarantees satisfactory performance of the PO, if any, by its delegate or subcontractor. Further, if Supplier assigns its rights to receive payments to a third party as permitted by this Section 20, Company's remittance of payment for Goods purchased hereunder to such designated third party shall constitute full satisfaction of Company's payment obligations to Supplier to the same degree as if Company had paid Supplier directly. Supplier shall enter into a written agreement with any permitted subcontractor, which, at a minimum, meets the insurance and confidentiality requirements of this PO.
20. **COMPLIANCE WITH LAWS AND IP RIGHTS.** Supplier represents and warrants that: (a) General: Goods provided hereunder, shall comply with all applicable federal, state, provincial municipal, and international laws, statutes, rules, regulations and Orders, especially those which relate to food, agriculture, environmental, health, safety, product safety and intellectual property. Supplier shall obtain and furnish any information reasonably requested by Company, including test reports prepared by certified and accredited testing laboratories relating to lead, phthalates, and heavy metals content in the Goods, to enable Company to ensure its own compliance with product safety laws, and to confirm compliance with this provision or to determine the environmental, health or safety effects of materials or chemicals contained in or used by a Good(s) provided to or delivered by Supplier.
21. **REMEDIES.** Company's remedies shall be cumulative and shall include any remedies allowed by law. Acceptance of any Goods or payments therefore shall not waive any breach.
22. **INDEPENDENT CONTRACTOR.** Supplier is an independent contractor for all purposes, without express or implied authority to bind Company by contract or otherwise. Neither Supplier nor its employees, agents or subcontractors ("Supplier's Personnel") are agents or employees of Company and neither Supplier nor Supplier's Personnel are entitled to any employee benefits of Company, including but not limited to, any type of insurance.

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23. **TRADEMARKS/PUBLICITY.** Neither party shall make any public communication regarding this Agreement without the prior written consent, in each instance, of the other and shall not use any trademark, service mark, name, logo or other intellectual property right of the other company ("Company Marks"). Neither party shall acquire any proprietary rights therein under this Agreement. Consent can be revoked upon written notice.
24. **AFFILIATE ORDERING.** Affiliates of Company may procure Goods from Supplier under the terms and conditions of this PO; provided that, such Affiliate enters into a separate but materially similar order. Such separate order form shall be deemed an independent agreement between such Company Affiliate and Supplier. Supplier shall look solely to such Company Affiliate (and not to the original Company entity executing this PO or any other Affiliates) for satisfaction of any payment obligations, liability, and claims arising under or relating to any Affiliate Agreement without any claim to joint and several liability between Affiliates.
25. **MISCELLANEOUS.** This PO may not be modified or altered except by written instrument duly executed by both parties. The waiver or failure of either party to exercise any right provided for herein will not be deemed a waiver of any further right hereunder. All provisions hereof relating to compliance with law, proprietary rights, confidentiality, indemnification, and any other sections intending to survive will survive the termination of this PO. This PO shall be governed by and construed according to the laws of the State of Georgia, without regard to its conflicts of laws principals. All communications, notices and demands of any kind which either party may be required or desire to give to or serve upon the other party shall be made in writing and shall be sent by certified mail, return receipt requested, or overnight or same-day delivery by reputable courier service to the other party at its specified address.