

**Prior to shipping, Vendor must sign and return this agreement to:**

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## **VENDOR AGREEMENT**

WHEREAS, Ace Hardware International Holdings, Ltd., a Bermuda corporation (hereinafter, "AIH") wishes to enter into a relationship with

\_\_\_\_\_ a[n] \_\_\_\_\_, organized under the laws of \_\_\_\_\_ (hereinafter, "Vendor") whereby AIH may purchase from Vendor, on a non-exclusive basis, upon the terms and conditions set forth herein, and subject to Vendor's continuing compliance with this Agreement, including all of the Additional Documents referenced and incorporated herein, all as revised from time to time by AIH as referenced in the Agreement, certain products and/or services, to be further described in purchase orders issued pursuant to this Agreement, (i) for sale to consumers by AIH retailers' stores located outside of the United States, and/or (ii) for sale to AIH for its own use/consumption or the use/consumption by AIH retailers located outside of the United States;

WHEREAS, Vendor wishes to sell such product to AIH for such purposes;

NOW THEREFORE, in consideration of these premises, which are incorporated into the agreement by this reference, this agreement is entered into by and between AIH and Vendor on this \_\_\_ day of \_\_\_\_, 20\_\_.

### **1. ORDERS AND ORDER CONFIRMATION**

**1.1** AIH will email or fax a proposed Purchase Order (PO) to Vendor (in substantially the form of the PO Template set forth in the "Additional Documents" at the end of this Agreement and incorporated herein by reference).<sup>1</sup> In addition to its standard terms and conditions, the PO shall specify (i) the goods to be purchased from Vendor, and (ii) a requested shipping date. Vendor shall respond via email or fax within three (3) business days, confirming shipping date or specifying best shipping date closest to AIH-requested date, and further specifying cube and port of origin/factory pick up location. Vendor shall

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<sup>1</sup> All "Additional Documents" are found at [www.acehardware-vendors.com](http://www.acehardware-vendors.com) > Ace Vendor Manuals > International Vendor Agreement Documents. Additional Documents are updated by Ace at its sole discretion and are operative upon posting at this site. It is Vendor's responsibility to visit this site prior to accepting a particular PO to ensure Vendor's compliance with all current guidelines and requirements hereunder.

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send confirmation of same by returning PO to AIH with authorized signature and a pro forma invoice (PI) within three (3) business days.

**1.2** Upon receipt of Vendor-signed PO and Vendor's PI for the particular order, AIH shall notify Vendor of AIH acceptance or rejection of same. Should AIH accept the PO, AIH shall, within three (3) business days of receipt of Vendor-signed PO, either (a) prepare a draft Letter of Credit (L/C) or Telex Transfer Instruction ("T/T Instruction") for approval by Vendor. The draft L/C or T/T Instruction, as applicable, will set forth the requirements noted at Section 2 below and shall also stipulate if there are any additional requirements, such as, but not limited to fumigation and textile certificates . Notwithstanding any such stipulation of special requirement, in no event will such L/C or T/T Instruction stipulations override Vendor's responsibilities under Sections 4 or 7 of this Agreement.

**1.3** Vendor will have 24 hours to review the AIH draft L/C or T/T Instruction, as applicable, and respond with any requested changes. If AIH does not receive such changes from Vendor within 24 hours of AIH transmission of such draft, AIH will transmit the L/C application to its bank and instruct the bank to open the L/C or deem the T/T Instruction to contain acceptable terms, as applicable. If Vendor requests any changes to the L/C once it has been opened, or requests any changes to the terms set out in the T/T Instruction, as applicable, such proposal shall render the PO null and void and the L/C or T/T Instruction, as applicable, shall be rescinded. In the event that there is a rescission or should negotiation between the parties result in a revised L/C, any rescission or amendment charges from the bank or other 3<sup>rd</sup> party processor shall be at Vendor's sole cost and expense.

**1.4** Vendor acknowledges that AIH requires a 30-day advance written notice for any price changes prior to order confirmation. All price changes must be sent to the attention of the appropriate person in the AIH or Oak Brook office.

**1.5** In the event that Vendor is requested to deliver products directly to an AIH retailer's location, a Purchase Order will not be issued until such time as Vendor has executed a Foreign to Foreign Agreement in substantially the form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference.

## **2. LETTERS OF CREDIT**

### **2.1 AIH BANK:**

All letters of credit being issued outside the U.S will be handled by the Hong Kong branch of AIH bank, currently as follows:

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Bank of America – Hong Kong Branch  
9/F Devon House  
979 Kings Road  
Hong Kong, China

All letters of credit being opened by AIH to any vendor with a U.S address will be issued by AIH bank, currently as follows:

Bank of America  
12 W. Trade Street, 21<sup>st</sup> Floor  
NCI-005-21-01  
Charlotte, NC 28255

**2.2 VENDOR BANK:**

Non-U.S. vendors: For letters of credit issued by AIH through the Hong Kong branch of AIH bank, Vendor may deal directly with AIH bank (Bank of America) or may specify an additional advising bank of Vendor’s choice. However, all charges and fees of advising bank shall be borne solely by Vendor.

U.S Vendors: For letters of credit issued to U.S. vendors, AIH shall instruct its bank to send the letter of credit directly to Vendor address via airmail or DHL, without going thru an advising bank, unless otherwise instructed by Vendor, which instruction shall be implemented by AIH at Vendor’s sole expense.

**2.3 DOCUMENTATION**

2.3.1 Letter of Credit Vendors.

Each L/C issued pursuant to this Agreement shall specify which documents must be presented for each shipment, and how those documents should be prepared. However, the following documents are always required (“Core Documents”) for presentation prior to payment:

A. Commercial invoice in duplicate, including the following information:

- 1) Bill to: AIH
- 2) Ship to
- 3) The terms of sale
- 4) The item numbers
- 5) AIH SKU numbers
- 6) A detailed description of each item
- 7) The correct price - in U.S. dollars
- 8) The PO number issued by AIH
- 9) Port of origin

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- B. Packing list in duplicate, which must accurately reflect the contents of the shipment including the following information:
- 1) Piece count
  - 2) Product description
  - 3) Weight and measure
- C. Goods Received Note  
It is the policy of AIH to use the Goods Received Note in lieu of the bill of lading as the transport document. Our forwarder's name and address will be indicated in the L/C. AIH's designated freight forwarder will provide this Goods Received Note to Vendor once AIH has received the Forwarder's cargo receipt of delivery to the designated forwarder or warehouse.
- D. Inspection Certificate  
Inspection is required for all orders. The Quality Control Department of AIH will determine what type inspection (e.g., by the 3<sup>rd</sup> party or by AIH's QC base on photo or sample or mass production, etc.) is required for the order and shall notify Vendor of such inspection requirements at least two weeks prior to the ship date. Only when the inspection is passed will an Inspection Certificate be sent to Vendor.

1.3.2 T/T Vendors

Each T/T Vendor must present the documents listed at paragraphs 2.3.1, A, 2.3.1, B and 2.3, D above. The documents listed at 2.3.1, B shall be in the form of either a Bill or Lading or a Packing List.

1.3.3 Deposit in Advance Vendors

Prior to an initial deposit being made to a "Deposit in Advance Vendor," such Vendor must provide a copy of the confirmed PO (in writing). Subsequent to the initial deposit, payments will be made to such Vendor only upon the terms set forth in the appropriate L/C or T/T Instruction and as specified at paragraphs A through D above.

In addition to the Core Documents set forth above, AIH may require additional documents, which, if required, will be stipulated in the specific L/C or T/T Instruction, as applicable.

**3. PRODUCT RECORDS**

In order to maintain consistency and a complete record of products, all items/programs purchased by AIH hereunder must be documented by use of the New Item Start Sheet in the form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference. New Item Start Sheets must be

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completed by Vendor with the assistance of the AIH Merchandising Team before any orders for such products can be placed by AIH.

#### **4. VENDOR COVENANTS**

##### **4.1 SERVICE STANDARDS**

Orders will be filled at 100% on a timely basis. The term, “timely basis” means all orders must be shipped within Vendor’s confirmed estimated time of delivery (ETD) in AIH’s system.

- 4.1.1 The parties agree that AIH’s damages associated with damages Vendor’s delay of the shipment or non-performance (failure of the delivery) will be difficult to ascertain and therefor agree that, in addition to AIH rights to terminate a PO as noted in Section 4.1.2 below, as liquidated damages and not as a penalty, Vendor will pay AIH the amount of (A) two percent (2%) of the purchase price of goods not shipped on the ETD; (B) five percent (5%) if shipment is delayed by fourteen (14) calendar days from the ETD; and (C) ten percent (10%) if shipment is delayed by thirty (30) calendar days from the ETD.
- 4.1.2 Notwithstanding any other provision contained herein, AIH specifically reserves the right to revoke any PO at any time prior to Vendor’s shipment of the goods (if stock items) or manufacture of the goods or provision of the services (if produced specifically to fulfill a PO) relating to such PO. Time is of the essence with respect to each PO. If Vendor’s delivery of goods is not shipped on a timely basis or the provision of the services is not completed by the time designated or promised, AIH may, by written notice to Vendor or by oral notice to Vendor subsequently confirmed in writing, terminate, cancel or postpone such PO as to the goods or services not yet received. AIH may also terminate, cancel or postpone any PO as to undelivered shipments or unperformed services under any PO by providing written notice to Vendor.
- 4.1.3 Goods furnished by Vendor shall conform with all AIH instructions, specifications and descriptions furnished to Vendor in writing (whether in the PO or otherwise), shall conform with all requirements prescribed by all international, federal, state, provincial, county or local law, rule, regulation, ordinance, treaty or inter-governmental agreement applicable to the exporting country, the transit countries or the destination country, and shall be shipped in recognized, standard containers.

##### **4.2 STANDARD OF CONDUCT**

- 4.2.1 Vendor represents and warrants that with respect to all products purchased by AIH under this Agreement, the following is true:

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- A. No child or prison labor is employed at any stage of the manufacturing process.
- B. No illegal means or materials are used in the manufacturing process.
- C. Country of Origin labeling is true and correct.
- D. All shipments are made in compliance with the trading laws and regulations of the exporting country, the transit countries and destination country.
- E. Vendor agrees to avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act (“FCPA”) (currently located at [www.justice.gov/criminal/fraud/fcpa.html](http://www.justice.gov/criminal/fraud/fcpa.html)) and any other applicable laws. Vendor agrees to ensure that all persons performing services on AIH’s behalf receive appropriate training on the FCPA and all other applicable anti-bribery laws, and affirms that it has not and agrees that it will not, in connection with its business activities and transactions involving AIH, make or promise to make any payment or transfer anything of value, directly or indirectly, to: (i) any governmental official or employee (including employees of companies or entities owned wholly or in part by any government agency); (ii) any political party, official of a political party or candidate (or to an intermediary for payment to any of the foregoing); or (iii) to any other person or entity if such payment or transfer would violate the laws of the country in which it is made or the laws of the United States of America. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, money laundering or other improper means of obtaining or retaining business. Vendor agrees to fully cooperate with any investigation by the United States or other country (or its applicable agencies) of Vendor’s compliance with the FCPA or other applicable laws in connection with its business with AIH, and will notify AIH immediately should it learn of any such investigation. Vendor further agrees to certify, in the form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference, that it has not violated the FCPA or other applicable anti-bribery laws in connection with its business with AIH, and that it is not aware of any such violations by its employees or agents.
- F. The goods and services will be free of the claim of any person for infringement or misappropriation of any patent, copyright, trademark, trade secret, license or other third party rights.
- G. The title conveyed to Ace Corporate with respect to the goods shall be good and merchantable and their transfer rightful; and that the goods and services will be delivered free of any security interest, lien, encumbrance, or charge.

4.2.2 Vendor acknowledges that AIH employees are required to comply with the AIH Business Conduct Policy adopted by AIH and Vendor agrees that it will not take any action that would cause any AIH employee to violate his or her obligations under such Business Conduct Policy, as revised by AIH from time to time. The

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current AIH Business Conduct Policy is accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference.

**4.3 DISCLOSURE OF CHEMICALS, HAZARDOUS GOODS DECLARATIONS AND OTHER LEGAL REQUIREMENTS**

- 4.3.1 Vendor shall inform AIH in writing of any chemicals contained in vendor's products where the distribution, sale, offering for sale, use, labeling, packaging, chemical content disclosures, registration or disposal of such chemicals is regulated by any international, federal, state, provincial, county or local law, rule, regulation, ordinance, treaty or inter-governmental agreement applicable to the exporting country, the transit countries or the destination country.
- 4.3.2 Vendor shall furnish AIH with copies of any instructions, warnings, restrictions or other materials applicable to the chemical content of any products sold to AIH.
- 4.3.3 Vendor shall supply specific shipping information to AIH about the products AIH purchases from Vendor with respect to all applicable hazardous materials contained in such products. To that end, Vendor agrees to complete and timely deliver all information requested on the Vendor Hazardous Goods Product Information Request accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference. A separate form must be completed for each UPC/EAN (package, type, size or volume) and must include the appropriate MSDS as well as both Vendor's stock number and the AIH SKU on the form and on any MSDS sheets for the product.
- 4.3.4 Prior to shipment of any of Vendor's product(s) whose distribution, sale, offering for sale, installation, construction, use, labeling, packaging, chemical or material content disclosure, registration and/or disposal is regulated for any reason (for example but not limited to any such product's chemical or material content) by any international, federal, state, provincial, county or local law, rule, regulation, ordinance, treaty or inter-governmental agreement applicable to the exporting country, the transit countries or the destination country, Vendor shall (i) notify AIH in writing of such fact, including in such written notice a specific reference to the applicable law, rule, regulation, ordinance, treaty or inter-governmental agreement; (ii) furnish to AIH copies of any instructions, warnings, restrictions or other materials applicable to any such products; and (iii) ensure that Vendor's products and product packaging carry appropriate disclosures and warning labels and otherwise comply with all such laws, rules, regulations, ordinances, treaties and inter-governmental agreements.

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**4.4 COUNTRY OF ORIGIN & PACKAGING REQUIREMENTS**

4.4.1 Each product must include an accurate country of origin statement on the shipping box and on the individual product boxes. In addition, the country of origin of products sold by Vendor to AIH must be documented by use of the Country of Origin Certification in the form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference.

4.4.2 All goods purchased from Vendor hereunder are subject to the Packaging Requirements set forth in the Packaging Requirements Information form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference

**4.5 PRODUCT LIABILITY AND OTHER INSURANCE COVERAGE**

Vendor shall maintain Product Liability Insurance and all such other insurance coverage in form and amounts as are set forth in the “Insurance Requirements” information form accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference.

**4.6 AIH AUDIT RIGHTS**

AIH may request, schedule and perform an audit of Vendor’s facilities and/or records with respect to compliance with above covenants at any time. The audit may be performed by AIH, its parent or affiliated entities or a 3<sup>rd</sup> party selected solely by AIH.

**5. MERCHANDISING STANDARDS**

**5.1 UPC/EAN CODES**

All products purchased from Vendor must have UPC and EAN codes on the product. Cartons must be marked with the SCC code.

**5.2 PRICE CHANGES**

5.2.1 AIH requires a thirty (30) day prior written notice for all price increases. Prices will be based upon order date, not shipment date. U.S.-based Vendors must send notice to the attention of the contact person specified.

5.2.2 Price increases will not be accepted on open PO’s.

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**6 DEFECTIVE MERCHANDISE POLICIES AND PROCEDURES**

**6.1 POLICY**

Goods and services purchased hereunder are subject to inspection and approval by AIH within a reasonable time after Vendor's delivery of the goods or provision of the services. AIH reserves the right to refuse any goods shipped or services provided contrary to instructions, specifications or descriptions furnished to Vendor by AIH, or which shall fail to conform with any other provisions hereof or any requirements provided by law, or in other than recognized standard containers. AIH may hold any rejected goods at Vendor's risk and expense and may charge Vendor with costs of transportation, shipping, unpacking, examining, repacking, reshipping and other similar expenses. Payment shall not constitute an acceptance of any goods or services or impair AIH's right to inspection or any of its remedies.

**6.2 PROCEDURE**

- 6.2.1 AIH shall submit information regarding the defective merchandise to Vendor in writing within ten (10) business days after discovery of such defect by AIH. If the defective merchandise constitutes greater than three percent (3%) of the items of the merchandise of that SKU on the PO, AIH shall, depending on circumstances of payment, either withhold payment or receive a refund or credit from Vendor (at AIH sole option) for the entire cost of goods, including shipping, handling and any other related expenses with respect to the defective merchandise.
- 6.2.2 Defective merchandise will not be returned to Vendor except at Vendor's own arrangement and Vendor's sole cost. Ace will not hold or store defective merchandise for longer than ten (10) business days after notice to Vendor or receipt of defective merchandise.

**7. INDEMNIFICATION**

- 7.1.1 Vendor hereby agrees to defend, indemnify and hold (i) AIH, (ii) Ace Hardware Corporation, a Delaware corporation ("Ace Hardware"), (iii) each AIH and Ace Hardware subsidiary and affiliate, (iii) any and all AIH retailers and/or others to whom AIH, Ace Hardware or any AIH or Ace Hardware subsidiary sells Vendor's products and/or services (each an "AIH Affiliate") and (iv) the respective officers, directors and employees of AIH, each Ace Hardware and AIH subsidiary and each AIH Affiliate (all of the foregoing collectively referred to herein as "AIH Covered Entities") harmless from and against all claims, demands, liabilities, losses, damages, suits, judgments, costs, expenses (collectively, "Claims") and reasonable attorney's fees in any manner arising out of or resulting from:

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- a) bodily injury, sickness, disease or death of any person or persons, or damage to or destruction of tangible property, including the loss of use resulting therefrom, caused by defects in the products (including but not limited to latent defects) or caused by or occurring during the course of performance of any services provided by or on behalf of Vendor;
- b) the actual or alleged failure of Vendor's products or services to include (and/or Vendor's failure to provide to AIH instructions, warnings, restrictions, accurate descriptions or other materials required by, or to otherwise comply with any international, regional, country, federal, state, provincial, county, or local law, rule, regulation, ordinance, treaty or inter-governmental agreement applicable to the distribution, sale, offering for sale, installation, construction, use, labeling, packaging, chemical or material content disclosure, registration or disposal of such products or services; and/or
- c) the infringement or alleged infringement of any patent, trademark, trade dress, copyright or other intellectual property or third party right arising out of the (i) importation into the intended country of sale, or the intended use, offering for sale or sale of such products, (ii) production or exportation of such products from the country of source or transit, or (iii) performance or the intended use of such products or services.

Vendor expressly acknowledges and agrees that these indemnification provisions apply to Claims arising at any time from products previously sold and/or services currently and/or previously provided by Vendor and/or any Vendor Entity to AIH whether on a "foreign-to-foreign" (aka drop ship) or "warehouse order" basis or otherwise.

- 7.1.2 If Vendor has not done so prior to the execution of this Agreement, Vendor agrees to execute and deliver to AIH the Vendor Indemnification Agreement accessible at the AIH Vendor Portal set forth in footnote 1 to this Agreement and, in its then-current form, incorporated herein by this reference and further expressly acknowledges and agrees that (i) this Agreement shall not, and shall not be deemed or interpreted to, nullify, render void or otherwise lessen or mitigate against the effectiveness of any other indemnity agreement that Vendor previously has executed or in the future may execute in favor of AIH, Ace Hardware and/or any AIH Subsidiary and (ii) this Agreement and such other agreement(s), if any, shall be collectively interpreted so as to effectuate the broadest possible indemnification and hold harmless obligation by Vendor.

## 8. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the internal laws of the country of Bermuda.

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**9. MISCELLANEOUS**

This Agreement may be executed in any number of counterparts (by facsimile transmission or otherwise), each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. No inference shall be drawn against AIH owing to AIH's role as drafter of this Agreement. If any provision of this Agreement is determined to be illegal, against public policy or otherwise unenforceable, it will not invalidate or render unenforceable any other provision hereof, and each such provision shall at all times be considered separate and severable in this regard. This Agreement may not be modified or supplemented by course of dealing or course of performance between the parties or by usage of trade.

**By signing this Agreement, Vendor acknowledges that the Additional Documents listed below are an integral part of this Agreement, that each such Additional Document is incorporated herein and, as may be amended from time to time, made a part hereof and Vendor agrees that compliance with the terms of each such Additional Document is required hereunder.**

ADDITIONAL DOCUMENTS INCORPORATED IN THE AGREEMENT BY THIS  
REFERENCE

- Business Conduct Policy
- Country of Origin Certification
- FCPA Certification
- Foreign to Foreign ("Drop Ship") Agreement
- Insurance Requirements
- New Item Start Sheet
- Packaging Requirements
- Purchase Order Template
- Vendor Hazardous Goods Product Information Request
- Vendor Indemnification

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**IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORIZED OFFICERS AS SET FORTH BELOW.**

Vendor Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Name and title of authorized  
Signature (with company chop, if applicable)

\_\_\_\_\_

Date Signed: \_\_\_\_\_

**ACE HARDWARE INTERNATIONAL HOLDING, LTD.  
a Bermuda corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_