

## GKPECIALS.COM TERMS & CONDITIONS

1. **PURCHASE ORDERS.** You, as a vendor (including all of your agents, subcontractors or suppliers) desiring to sell goods and/or services to Gkspecials (hereinafter, "Seller") shall be bound by this Gkspecials Terms & Conditions Non- Merchandise Purchase Order (hereinafter, "Order") in addition to Gkspecials Terms of Engagement for Gkspecials Business Partners as also set forth on [www.gkspecials.com](http://www.gkspecials.com) and for all goods, products and materials (collectively, "Goods") and services ("Services") sold by Seller to Gkspecials Department Stores, Inc. (hereinafter, "Gkspecials"). This Order expressly limits acceptance to the terms and conditions stated herein and any additional or different terms prepared by Seller in an invoice or otherwise are objected to and rejected. Seller agrees that all prior negotiations with regard to the Goods and/or Services ordered herein are merged herein and that this Order shall constitute the complete and exclusive contract between Gkspecials and Seller with respect to such Goods and/or Services. Any estimate or forecasts of Gkspecials' future needs for Goods or Services which may be provided to Seller by Gkspecials are for long range planning purposes only and shall in no way represent a commitment by Gkspecials. Gkspecials shall have no responsibility or liability for any actions taken by Seller based on such estimates or forecasts. If this Order is referenced as part of a request for proposal or bidding event, this Order will become binding only if Seller is expressly awarded business by Gkspecials.
2. **SHIPMENT OF GOODS.** If Goods are not shipped and/or Services are not performed in accordance with the dates specified, Gkspecials may, without any liability, cancel the Order by a written notice to the Seller. The time of delivery and performance is of the essence in this Order. If the Goods and/or Services are not shipped or performed exactly as specified in the Order, in addition to all other available remedies, Gkspecials may assess Seller a charge equal to five percent (5%) of the invoice as liquidated damages. Acceptance of any part of the Order shall not bind Gkspecials to accept future shipments or Services, nor deprive Gkspecials of the right to return Goods and/or Services already accepted. Goods returned by Gkspecials will be returned at the Seller's risk and expense. Seller hereby waives any right to cure improper tender which might otherwise be available under law. In the event Seller fails to accept or facilitate Gkspecials' return of defective and/or damaged Goods within a reasonable period of time after receiving Gkspecials' notice, then Gkspecials shall, in addition to all other rights and remedies set forth herein or available under law or equity, have the right to dispose of the defective and/or damaged Goods as Gkspecials sees fit and Seller shall waive all rights to the defective and/or damaged Goods thereafter.
3. **PRICE; SHIPPING; DELIVERY.** Each shipment must be carefully packed and the packing slip must accompany each shipment showing this Order number, item numbers, and complete description of contents. Any damage or loss caused by Seller's failure to pack properly shall be paid by Seller. No separate charges for packing, drayage, or storage shall be made and Gkspecials is responsible for only the lowest rate of transportation on shipment unless otherwise specified herein. Separate Orders shall not be combined on one packing slip. The invoice shall be mailed separately from shipment to the address set forth on the bottom of the front of this Order. Invoices dated after the twenty-fourth of the month will be billed as of the first of the following month. Gkspecials shall not be responsible for any shipments of excess Goods above the quantities set forth in our Order. Seller acknowledges and agrees that any such excess Goods shall become the sole and exclusive property of Gkspecials with no additional payments owed from Gkspecials to Seller for such excess Goods.

Seller shall furnish Gkspecials with proof of delivery at Gkspecials' request. In the event of Seller's failure to notify Gkspecials' Accounts Payable Department in writing within six months following shipment of Goods in completion of Services pursuant to this Order or Gkspecials' nonpayment of Seller's invoices, Gkspecials shall have no further obligation to pay Seller for Goods shipped or Services provided pursuant to this Order.

4. **CANCELLATION.** Gkspecials may cancel this Order in whole or in part without Seller's authorization and at Gkspecials' sole and absolute discretion in the event of any of the following, each of which it is agreed will substantially impair the value of the whole Order to Gkspecials: (A) there is any breach of Seller's warranties hereunder, (B) there is any delay in delivery or performance or departure from delivery and routing instructions, (C) there is any variation from the quantities, quality, specifications, samples, assortment, prices or other terms and conditions specified in this Order, (D) there is any breach of Seller's obligations hereunder, (E) the Goods or Services become the subject of any Claim (as defined in Section 12 "Indemnification") by any third party, (F) Seller becomes insolvent or makes an assignment for

the benefit of creditors, or a receiver for Seller's assets or business is appointed or Gkspecials reasonably believes Seller may become insolvent or subject to bankruptcy proceedings, or (G) fire, flood, earthquake, tempest, strikes, war, acts of God, civil commotion, or other causes beyond Gkspecials' reasonable control. In such event, Seller shall immediately stop all Services and provision of Goods and observe any instruction from Gkspecials as to Services and Goods in process. Cancellation for any of the foregoing reasons shall constitute "for cause" and shall not subject Gkspecials to any liability, cost, or charge whatsoever. Gkspecials may also cancel this Order in whole or in part without cause at any time. In the event of such cancellation, Gkspecials' liability to Seller shall be limited to the contract price of that portion of this Order fully and properly performed prior to such cancellation.

5. **PRICE PROTECTION.** If, before the date of final delivery or final performance under this Order, Seller offers to sell or sells Goods or Services substantially similar to that ordered herein to another similarly situated purchaser at a lower price and/or on terms more favorable to such purchaser than are stated herein, the terms of this Order are hereby revised to equal the lowest price and/or most favorable terms at which Seller sells such Goods or Services, and payment hereunder shall be made accordingly.
6. **SUPPLIES, EQUIPMENT, LICENSES, ETC.** Seller shall furnish all materials, supplies, equipment and labor necessary to complete the Services or provide the Goods which are the subject of this Order in accordance with the schedule established by Gkspecials. Seller shall, at its expense, obtain all licenses and permits and shall pay all inspection fees necessary to complete the Services and/or provide the Goods. In the performance of Services, as well as the provision of Goods hereunder, Seller shall comply with all Applicable Law.
7. **WORK SITE; ASSUMPTION OF RISK.** Seller shall keep its work site free from waste and rubbish and shall leave the site in a clean and workmanlike condition. Seller acknowledges that it is familiar with all conditions relating to the performance of Services and the site and with all other matters and conditions which would affect the performance of this Order, and Seller assumes all risk with respect thereto. Commencement of Services or provision of Goods constitutes Seller's acknowledgment that all plans, specifications and other contract documents relating thereto are sufficient for the completion of Seller's Services or provision of Goods.

For the avoidance of doubt, Seller is fully responsible for all losses or damages incurred as a result of Seller's performance or nonperformance of any Services or provision of Goods, whether performed or provided by Seller, Seller's employees, agents, affiliates and/or subcontractors. In addition to all other indemnification obligations set forth in this Order, Seller agrees to defend, indemnify and hold Gkspecials harmless from any and all Claims arising out of or in any manner resulting from Seller's provision of Goods or performance of the Services and/or Gkspecials purchase or use of the same, including, but not limited to: (i) any act, omission or negligence by Seller, Seller's employees, agents, affiliates and/or subcontractors; (ii) damage to or destruction of personal or real property of Gkspecials or any third party or the injury or death to persons, including without limitation, employees or invitees of Gkspecials and Gkspecials, Gkspecials' employees, agents, affiliates and/or subcontractors; and (iii) any third party claims brought by Seller's employees, agents, affiliates and/or subcontractors. Seller shall, by entering upon and using any Gkspecials' facilities, be deemed to have accepted the Gkspecials' facilities in its then condition. Gkspecials assumes no liability for damage to or loss of Seller's property or the property of Seller's employees, agents, affiliates and/or subcontractors. Seller acknowledges that any Services Seller conducts at Gkspecials' facilities are conducted entirely at Seller's own risk, and Seller hereby releases Gkspecials from any Claims, liability or loss occurring at Gkspecials' facilities. Seller agrees to use best efforts not to hinder any of Gkspecials' operations or to detract from Gkspecials' customer experience while at Gkspecials' facilities. Seller shall immediately remove all materials, equipment and rubbish Seller places on Gkspecials' facilities, and restore, at Seller's sole cost and expense, Gkspecials' facilities to the condition it was in immediately prior to Seller's entrance onto the facilities.

8. **GUARANTEE.** Without limiting Seller's liability under any warranties contained in this Order, Seller guarantees the Services and Goods for a period of one year from and after completion of all Services and provision of all Goods covered by this Order, or for such longer period as may be provided in any of the other terms of this Order. In the event any of the Goods or Services covered by this Order requires repair, replacement or adjustment during the guarantee period, Seller shall promptly make all necessary repairs, replacements or adjustments at its sole cost. The foregoing is in addition to any other remedies Gkspecials may have hereunder.

9. **INDEMNIFICATION.** In addition to any other indemnification obligations set forth herein, Seller shall defend, indemnify and hold harmless Gkspecials, its agents and employees, from any and all liability including strict liability, any and all allegations, demands, claims, charges, liabilities, damages, causes of actions, suits, proceedings, judgments, awards, orders, decrees, fines, penalties, debts, losses, costs or expenses, including, but not limited to, attorneys' fees, court costs and costs of settlement (collectively "Claims"), which Gkspecials may suffer, sustain or become subject to arising out of, or in any manner based upon, Seller's breach of any representation or warranty herein, the performance or nonperformance of the Services of this Order, or arising or occurring by reason of the Goods or Services, or the use thereof, or any defect therein or condition thereof, including without limitation any Claim or suit for unfair competition, or alleged infringements of patents, copyrights, trade secrets, trademark or other intellectual property right, or on account of Seller's violation of any of the terms hereof, including but not limited to compliance with all relevant laws and regulations. Seller acknowledges and agrees that Seller will promptly respond to Gkspecials notification of any Claim and shall promptly confirm Seller's defense and indemnification of Gkspecials as required herein. In addition to any other rights or remedies set forth herein, in the event Seller fails to promptly respond to Gkspecials notification of any Claim and/or fails to promptly confirm its defense and indemnification of Gkspecials as required herein, Seller will be responsible to reimburse Gkspecials any fees it may incur including attorneys fees and costs to pursue Seller's compliance (or compliance of any of Seller's subcontractors and suppliers) to the terms, conditions, representations and warranties set forth in this Order.
10. **TERMINATION.** In addition to the other events of termination provided in this Order, Gkspecials may terminate this contract if Seller fails to provide the Goods or prosecute the Services with sufficient diligence in Gkspecials' sole discretion. In the event of such termination, or any termination "for cause", Gkspecials may take possession of the Goods and any materials and equipment being used by Seller and may cause the Goods or Services to be completed in such manner as Gkspecials shall determine and Seller shall reimburse Gkspecials for the cost of completion.
11. **COMPLETION OF SERVICES.** Seller agrees to provide the Goods and complete the Services within the period of time required or specified. Any overtime or extra personnel required to meet Gkspecials' schedule shall be solely at Seller's expense. No price increase shall be permitted by reason of any claim of extra Goods or Services unless the extra Goods or Services were performed pursuant to a written order by Gkspecials setting forth the amount of the price increase.
12. **PAYMENT TERMS.** Unless payment terms are otherwise specified in this Order, Gkspecials may choose to make payment for any Goods provided and/or Services performed hereunder in a lump sum or in installments. If payment is made in a lump sum, payment will be made within 30 days after the provision of Goods and completion of all Services covered by this Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 30 days after the provision of all Goods and completion of all Services covered by this Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 30 days after receipt of Seller's application for payment ("Invoice"). The amount of each installment shall not be more than 90% of the portion of the contract price attributable to the Services in place or the Goods provided as of the 25th day of the preceding month as determined by Gkspecials less the aggregate of all previous payments. The final payment will be made within 30 days after provision of all Goods and completion of all Services covered by this Order and the receipt of Seller's final Invoice. Any provision herein for delivery of Goods or Services in installments shall not be construed as making Seller's obligations severable. Shipments of Goods sent C.O.D. without Gkspecials' written consent will not be accepted and will be at Seller's risk. If applicable, each application for payment shall include appropriate sworn statements and waivers or releases of mechanic's liens from

all subcontractors and material suppliers relating to the Goods and Services for which payment is requested, together with such other documentation as Gkspecials may reasonably request.

13. **DEFECTIVE; INFRINGING GOODS.** Seller represents and warrants that the Goods ordered herein shall be free from any defects in design, material or workmanship and be merchantable at the time of delivery to Gkspecials and at the time of use, and that the Goods shall be fit and safe for the particular purposes for which they are intended to be used. Seller represents and warrants that the Goods shall not infringe or encroach upon the contractual or proprietary rights of any other person, firm or corporation, including without limitation, the patents, trademarks, copyrights, rights of privacy, trade secrets or other intellectual property right of such third party. Seller shall indemnify Gkspecials, in accordance with Section 12 (“Indemnification”) of this Order. Gkspecials reserves the right to cancel at its sole and absolute discretion, without Seller’s authorization, at any time, any unshipped portion of Gkspecials Order and to return at any time, for full credit at Seller’s expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of Goods shipped hereunder which are defective in material or workmanship or which differ in any way from the terms, specifications and warranties herein contained or implied by law (including, without limitation, Goods shipped in excess of quantities ordered and Goods which deviate from sizes, colors, styles and quality ordered), and Seller shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties. Seller understands and accepts the responsibility to ensure that all Goods Seller provides to Gkspecials meet the requirements set forth herein regardless of who actually designs or manufactures the Goods. In the event Seller fails to accept or facilitate Gkspecials return of defective and/or damaged Goods within a reasonable period of time after receiving Gkspecials notice, then Gkspecials shall, in addition to all other rights and remedies set forth herein or available under law or equity, have the right to dispose of the defective and/or damaged Goods as Gkspecials sees fit and Seller waives all rights to the defective and/or damaged Goods thereafter. Gkspecials reserves the right (but shall not be obligated) to repair any defects and debit Seller’s account with the expenses involved when in Gkspecials sole judgment the cost of making such repairs would be less than the cost of replacement by Seller or cancellation of Gkspecials Order.
  
14. **RIGHT TO INSPECT.** Payment of freight charges shall not affect passage of title or who bears the risks of loss in transit. Until Gkspecials has inspected the Goods shipped and the Services performed under this Order and accepted it as being in conformity with all representations made by Seller when the Goods or Services were ordered, Seller's delivery obligations shall not be deemed complete, nor shall title pass to Gkspecials. Notwithstanding the foregoing, Gkspecials has no obligation to inspect the Goods or Services and Gkspecials’ payment or retention of the Goods or Services shall not constitute an acceptance of the Goods or Services not in compliance with this Order and shall not affect Gkspecials’ right to reject or return the same. Any such nonconforming Goods shall be treated as defective Goods, as set forth above.
  
15. **NO ASSIGNMENT; NO SUBCONTRACTING.** Seller may not assign or subcontract any rights or delegate any duties which Seller may have under this Order, in whole or in part, without the express written consent of Gkspecials.
  
16. **WORK PRODUCT.** Gkspecials shall at all times have title to specifications, designs, artwork, negatives, programs, software, photographs, plates and other work in progress furnished and intended for use in connection with this Order (collectively “Work Product”). Any Work Product, Goods manufactured solely for Gkspecials or other Services performed by Seller in connection with this Order shall be deemed to be “Work Made for Hire.” Any Work Product or Work Made for Hire shall be the sole property of Gkspecials and shall not be utilized by Seller in any way without the express written consent of Gkspecials. Seller shall use the Work Product or Work Made for Hire only in connection with this Order and shall not disclose Work Product or Work Made for Hire to anyone other than Gkspecials or Seller's employees, subcontractors, or government inspectors. Seller shall, upon Gkspecials’ request or upon completion of the Order, promptly return all Work Product and Work Made for Hire to Gkspecials.
  
17. **INDEPENDENT CONTRACTOR STATUS.** All Services performed shall be done as an independent contractor and the persons performing Services shall not be considered employees of Gkspecials. No provision of this Order shall be deemed or construed to create any other relationship between the parties such as employer and employee, principal and agent, partners, joint venturers or any other association other than that of independent contractors. Accordingly, Seller is not and shall not be deemed to be an agent of Gkspecials, and Seller is without any authority to enter any contract or take any action on behalf of Gkspecials or so as to obligate Gkspecials or any or Gkspecials’

affiliates. Except as otherwise specified herein, Seller shall have exclusive control and direction over the manner, means, details and methods by which Seller shall provide the Goods and perform the Services hereunder, and shall be solely responsible for the provision of all tools, equipment, and facilities necessary for the performance and for the payment of all license and other fees applicable to Seller's performance. Seller shall be solely responsible for all compensation, benefits and insurance for employment of such persons. Seller shall pay all taxes imposed by reason of the employment of such persons, including, but not limited to, any payroll taxes, social security taxes, and unemployment compensation taxes.

18. **REMEDIES.** If Seller fails to perform as specified in this Order, Gkspecials may, without limitation, and in addition to other remedies set forth herein or provided at law or in equity, (i) cancel this Order in whole or in part by written notice to Seller and Seller shall be liable to Gkspecials for all damages, losses, liability and Claims incurred by Gkspecials resulting from Seller's breach, or (ii) obtain the Goods or Services ordered herein from another source with any excess costs therefrom chargeable to Seller. Any sums payable to Seller shall be subject to all Claims and defenses of Gkspecials, whether arising from this or any other transaction, and Gkspecials may set-off and deduct any such sums against Seller or Seller's parent, subsidiary, affiliate, predecessor or successor (separately or collectively, "Affiliates") under any present or future invoices or amounts owed to Seller or Seller's Affiliates by Gkspecials. Seller shall be barred from commencing an action against Gkspecials for any loss, damage or other Claim of any kind unless a lawsuit is filed within one (1) year from the time Seller's loss, damage or Claim accrues.

In addition to any other right or remedy provided for herein or by law or in equity, Gkspecials reserves the right, without liability, in the event of Seller's breach of this Order, to purchase substitute Goods or Services elsewhere and to charge Seller with any loss incurred.

If any provision of any Order is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed modified only to the extent necessary to make such provision enforceable by such court, and the invalidity, in whole or in part, of any portion of this Order shall not impair or affect the validity or enforceability of the remaining provisions of such agreements. All rights and remedies under this Order are cumulative and the exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided for herein or at law or in equity.

19. **GOVERNING LAW; VENUE.** This Order shall be governed by the laws of the State of Wisconsin. Seller hereby agrees that any and all disputes arising under this Order shall be subject to adjudication only in the state courts of Waukesha County, Wisconsin or the United States District Court in Milwaukee, Wisconsin, and Seller hereby consents to the exclusive jurisdiction of those courts. In any dispute arising hereunder the prevailing party shall be entitled to attorneys' fees.