



**TRUE VALUE COMPANY, L.L.C.**

**TERMS AND CONDITIONS OF SALE**

True Value Company, L.L.C. ("Seller") is a wholesale distributor selling various products ("Products"). You ("Customer") desire to purchase Products from Seller. Customer and Seller agree that the following Terms and Conditions of Sale ("Terms") shall apply to Customer's purchase of Products from Seller.

**COMPLETE TERMS**

Sales by Seller are governed by these Terms. Seller objects to any different or additional terms. Seller reserves the right to change these Terms any time upon general notice on Seller's website that the Terms have changed and Customer's continued purchases from Seller constitutes acceptance of the Terms as changed. Seller's Policies and Procedures Manuals (as amended from time to time by Seller) ("Manuals") are incorporated herein and shall constitute a part of these Terms.

**PRICE AND PAYMENT**

The price to be paid by Customer to Seller shall be as set forth on Seller's statements. Prices are subject to change. Payment terms shall be as set forth on Seller's statements to Customer.

Customer shall pay in full on the date due all invoices on accounts receivable statements and any other financial obligations to Seller or its subsidiaries. Past-due balances are automatically subject to a finance service charge of 0.75% per statement, 1.5% per month (18% annually) and must be paid when due. In the event that collection efforts are necessary, Seller shall be entitled to the recovery of all costs and expenses, including attorneys' fees. Seller does not recognize bank holidays as a means to avoid late payment or late payment finance service charges. Seller will not renegotiate the rate, discount service charges assessed, or accept non-payment of legitimate service charges.

**VOLUME REBATE**

If Customer has purchased Products from Seller during the calendar year, Customer may be eligible for a volume rebate on qualifying purchases from Seller's regional distribution centers ("Net Handled Purchases") excluding opening stock orders (OSOs), non-merchandise, store supplies and clearance purchases, defective Products destroyed in field, and direct ship merchandise. Volume rebates will be calculated and paid for each store location and purchases may not be aggregated between or among stores. Volume rebates will be earned as set forth in the Manuals.

**LICENSE OF MARKS**

Seller shall permit use of Seller-owned servicemarks, trademarks, trade names or brand names under the Seller's brand standards (as amended from time to time by the Seller) ("Brand Standards"). If Customer elects to use a Designated Mark, Customer shall pay a monthly brand fee or program fee as set forth in the Brand Standards.

**SELLER INFORMATION**

All information and material furnished or made available to Customer, including without limitation, bulletins, price lists, illustrated catalogs, merchandising and pricing options, computer software, electronic data and the Manuals are confidential property of Seller, developed and promoted for the benefit of the Seller's customers, and Customer agrees not to divulge or display any of the information contained in this material to anyone not affiliated with Seller without obtaining the prior written approval of Seller, and not to use such information in a way which is detrimental to Seller

or its customers. Customer shall use such information and material only in connection with Customer's purchases from Seller and for the purpose of promoting Customer's business with Customer's customers. Customer acknowledges and confirms that any dissemination or other disclosure of such information and material for any other purpose, or to anyone not affiliated with Seller, shall cause immediate and irreparable harm to Seller. All such information and material shall be immediately returned to Seller upon termination of these Terms. Customer's obligations in this section will survive the termination of these Terms.

## **ACKNOWLEDGEMENTS**

Customer acknowledges and agrees that (a) Seller has not granted any protected or exclusive territorial or geographical rights to Customer and Seller may, at its sole discretion, accept any other Customer at any location without limitation, (b) Customer may receive different services, charges or freight rates based on the amount of merchandise purchased by Customer, (c) these Terms do not create a fiduciary relationship between Customer and Seller, and that Customer and Seller are and will be independent contractors, and that nothing in these Terms is intended to make either Seller or Customer a general or special agent, joint venturer, partner, or employee of the other for any purpose, (d) it shall identify itself conspicuously in all dealings with customers, suppliers, public officials, store personnel, and others as the independent owner of Customer's store and to place notices of independent ownership on forms, business cards, stationery, advertising and other materials, (e) Customer may not make any express or implied agreements, warranties, guarantees, or representations, or incur any debt, in the name or on behalf of Seller, (f) Seller will not be obligated to Customer for any damages to any person or property directly or indirectly arising out of Customer's store's operation or the business conducted by Customer under these Terms, (g) Customer shall honor any warranties or guarantees made to consumers that are placed on Products containing Seller owned Marks, (h) Customer will abide by posted policies provided by vendors of the Products, and (i) Customer will notify Seller if Customer intends to bid on and fulfill a local, state or federal government contract with any of the Products.

Seller does not warrant that Products ordered by Customer comply with Customer's country, state, county, municipality or other local laws, rules, regulations or regulatory requirements. Customer is fully responsible for ensuring that Products ordered from Seller can be legally sold in Customer's retail locations. All obligations related to shipping Products into international locations shall be the sole responsibility of the Customer. Should a Product be found to be in violation of any country, state, county, municipality or other local law, rule, or regulation, Customers selling in international locations shall defend and indemnify Seller and the manufacturer/vendor/third party sales representatives with respect to any regulatory or liability actions brought related to the Product.

## **TERMINATION/DEFAULT**

These Terms shall continue in force from year to year unless terminated as set forth in the following paragraphs.

Customer will be in default if (a) Customer fails to pay Seller any amount when due; (b) Customer fails for a period of five (5) days after receiving written notice from Seller to fulfill or perform any provisions of these Terms (other than the prior provision relating to due date of payments); (c) Customer becomes insolvent or bankrupt, or a petition therefore is filed voluntarily or involuntarily and not dismissed within thirty (30) days from filing; (d) Customer makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of Customer's assets are attached or seized under legal process and not released within thirty days thereafter; or (e) Customer fails to obtain written consent of Seller to an assignment of these Terms.

Upon Customer's default, Seller may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to cash in advance; (b) terminate these Terms and declare immediately due and payable the obligations of Customer for Products previously shipped and/or orders previously placed; (c) demand reclamation; or (d) suspend any further deliveries until the default is corrected, without releasing Customer from its obligations herein. In any event, Customer shall remain liable for all loss and damage sustained by Seller because of Customer's default.

In addition, either Party may terminate these Terms upon thirty (30) days' written notice. Upon written notice of termination by Customer, Seller reserves the right to immediately restrict or limit Customer's ability to purchase Product from Seller. Upon effective date of termination, all amounts due under these Terms will become immediately due and payable.

**LIMITATION OF LIABILITY**

**SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO THE PRODUCTS SOLD BY SELLER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, COMPLIANCE WITH SPECIFICATIONS, QUALITY OF MATERIALS OR WORKMANSHIP, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, USE OR OPERATION, SAFETY, PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT, OR TITLE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER THIRD PARTY FOR THE PAYMENT OF ANY CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATIONS, LOST PROFIT.**

**SELLER HAS NOT REPRESENTED TO CUSTOMER THAT A “MINIMUM”, “GUARANTEED”, OR “CERTAIN” INCOME CAN BE EXPECTED OR REALIZED. SUCCESS DEPENDS, IN PART, ON CUSTOMER DEVOTING DEDICATED PERSONAL EFFORTS TO THE BUSINESS AND EXERCISING GOOD BUSINESS JUDGMENT IN DEALINGS WITH CUSTOMERS, SUPPLIERS, AND EMPLOYEES. CUSTOMER ALSO ACKNOWLEDGES THAT NEITHER SELLER NOR ANY OF ITS EMPLOYEES OR AGENTS HAS REPRESENTED THAT CUSTOMER CAN EXPECT TO ATTAIN ANY SPECIFIC SALES, PROFITS, OR EARNINGS. IF SELLER HAS PROVIDED ESTIMATES TO CUSTOMER, SUCH ESTIMATES ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT REPRESENT ANY GUARANTEE OF PERFORMANCE BY SELLER TO CUSTOMER. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES EITHER EXPRESS OR IMPLIED REGARDING THE PERFORMANCE OF CUSTOMER’S BUSINESS.**

**GOVERNING LAW; JURISDICTION**

Any dispute, claim or controversy arising out of these Terms will be governed by Illinois law, without regard to choice of law rules. The parties hereby agree and consent to the exclusive jurisdiction of the state and federal courts located in Cook County, Illinois or in any other Illinois county contiguous to Cook County, Illinois or in the county in Illinois in which the Seller’s headquarters are then located.

**ASSIGNMENT**

These Terms are not assignable or transferable by Customer without the written consent of Seller but Seller shall have the right to assign without Customer’s consent.

IN WITNESS WHEREOF, the parties have executed these Terms as of the dates set forth below.

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

Company: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

Select a Designated Mark subject to the monthly brand fee or program fee.

True Value \_\_\_\_\_ Home & Garden Showplace \_\_\_\_\_ Induserve \_\_\_\_\_ Rental \_\_\_\_\_ Agway \_\_\_\_\_