

**THE HOME DEPOT
PURCHASE ORDER TERMS AND CONDITIONS (CANADA)**

The Purchase Order and these Purchase Order Terms and Conditions (collectively, the “PO”) sets forth the complete agreement between vendor (“Vendor”) and The Home Depot entity issuing this PO (“THD”) that provides for the purchase of products (“Products”) and/or services (“Services”), and, subject to Section 1 below, supersedes any prior agreement, written or oral, with respect to its subject matter. This PO is an offer by THD to purchase the specified Products and/or Services on the terms herein and can only be accepted on such terms. Any additional or different terms in Vendor's acknowledgment, invoice or other document will have no effect, subject to Section 1 below. Vendor's timely shipment or other performance hereunder shall be deemed acceptance of all terms of this PO.

1. Master Agreement. If the parties have executed a separate written agreement covering the Products and/or Services governed by a purchase order, including but not limited to, a Master Products and Services Agreement, the terms of that agreement will prevail over the terms of any purchase order or any other agreement in the event of conflict.

2. Strict Compliance. Time is of the essence. Vendor shall perform in strict compliance with the terms of this PO.

3. Cancellation. THD may cancel this PO, in whole or in part, at any time, with or without cause, upon written notice to Vendor without any liability to Vendor.

4. Representations and Warranties. Vendor represents and warrants the following for two (2) years from acceptance of the Products by THD and/or performance of the Services, as applicable:

(a) the Products will (i) comply with all applicable Laws (as defined in Section 32 below), (ii) meet the specifications, drawings, samples or other descriptions contained in this PO, or provided or approved by THD, (iii) will be merchantable, of satisfactory quality, of good material and workmanship, and free from defect and any liens or security interests, (iv) will be fit for the purposes intended and operate as needed, including being fit for THD's intended purpose, if known to Vendor, (v) not infringe or misappropriate a third party's intellectual property rights, and (vi) not in any way originate from or be provided by any country, person or entity that would cause THD to be in violation of or penalized under Canadian or other applicable economic sanctions laws;

(b) the Services will be performed (i) in a professional and workmanlike manner by qualified personnel, (ii) in compliance with Laws, including, immigration laws, THD's Onsite Provider Standards, if applicable, and any safety or other requirements communicated to Vendor;

(c) Vendor will (i) deliver the Products and perform the Services by the dates set forth in this PO, (ii) at its own expense, obtain and maintain all necessary permits, licences or other approvals, and provide all required labor, materials, and equipment; (iii) not dispose of any material on THD's premises absent THD's written consent; and (iv) upon completion of the Services, immediately return THD's premises to its original state, normal wear and tear excepted;

(d) no liens or claims will be filed, maintained or enforced by Vendor or its suppliers or contractors for any Service performed, or materials supplied;

(e) its obligations under this PO do not conflict with any agreement or restriction to which it is subject;

(f) this Purchase Order, when signed by the parties, will be valid, enforceable, and binding; and

(g) it is entering into this PO for business and/or commercial purposes only, is not entering into this agreement as an artisan, and is not hereby acting as a consumer under any provincial consumer regime.

These warranties survive delivery, inspection, payment, and acceptance. It is understood that all warranties created by this PO shall be cumulative and in addition to any other warranty provided by law or equity.

5. Responsible Sourcing Standards. Vendor shall, to the extent applicable, comply with THD's Responsible Sourcing Standards at <https://corporate.homedepot.com/page/responsible-sourcing-standards>.

6. Acceptance. THD will have a reasonable period of time after performance within which to inspect and accept the Products and/or Services. Receipt of, or payment for, the Product(s) and/or Services shall not constitute acceptance and will not affect THD's remedies.

7. Price. Unless otherwise set forth herein, the price is fixed and all-inclusive (other than with respect to taxes); no additional fees or charges apply. In lieu of paying taxes, THD may tender its tax exemption certificate. The price is exclusive of taxes, which will be disclosed, collected and submitted by the Vendor. The price set forth herein is the lowest charged by Vendor for similar quantities of the Product and/or Services to similar customers.

8. Payment. Vendor will invoice THD for the amounts due hereunder within 120 days of the Product shipment date or Services performance date or waive its right to payment for the same. Except as otherwise set forth herein, THD will pay all undisputed amounts within forty-five (45) days of the later of the date of (a) receipt of the applicable invoice, or (b) Product delivery or performance of Services. THD will receive a two percent (2%) discount on all invoices paid within thirty (30) days of receipt.

9. Invoicing. All invoices must be itemized and contain the following: (a) PO number; (b) Vendor's name; (c) address where payment should be sent; (d) as applicable, a detailed description of the Services and performance date, and each Product shipped, including size, quantity, SKU or item number, and unit price; (e) as applicable, the amount and a description of all taxes payable on the Products and/or Services; and (f) bill of lading with carrier's name and shipment date. THD will not be responsible for paying any invoice submitted by Vendor more than one hundred and twenty (120) days after Products and/or Services have been delivered. THD reserves the right to offset any amounts owed by Vendor (or its affiliates) to THD hereunder.

Vendor must submit invoices electronically through the Ariba Network at <https://service.ariba.com/> or through another THD approved vendor management system. If using the Ariba Network

for invoice submission, Vendor must use the Supplier Information and Performance Management tools on the Ariba Network to change Vendor's payment remit to address. Vendor's use of the Ariba network or any other third party vendor management system is at Vendor's sole risk. For questions about this PO, please visit <https://support.ariba.com/TheHomeDepot>.

10. Shipment Details. Each package within each shipment shall clearly reference the Product(s) within it, THD's PO number, and Vendor's packing list number. All Products shall be suitably packed in a manner sufficient to ensure that the Products are delivered in undamaged condition. Shipments which arrive at destination with broken, missing, or unreadable seals may be rejected, and Vendor will be liable as if there had been a total loss of shipment.

11. Inventions. For new or modified Products and/or Services, all rights, title, and interest in any and all inventions (including discoveries, ideas, or improvements, whether patentable or not), works of authorship, and other developments which are conceived or made during or after the term of this PO and (a) arise from THD's information, or (b) are developed specifically for THD, (the "Work") will belong to and be owned by THD. Vendor hereby assigns, to THD and its successors all rights, title, and interest, including all intellectual property rights, in and to the Works, such assignment effective upon creation of any Work. Nothing in this PO will affect the pre-existing intellectual property rights of the parties.

12. Confidentiality. Vendor will keep confidential the terms of this PO and all THD non-public and proprietary information. Vendor will not use this information for any purpose other than in performance hereof and will not disclose this information except to the extent required by law, and only after prior written notice to THD.

13. Audit. THD will have the right to audit and inspect ("Audit") the records and facilities of Vendor and its agents and contractors used in performance of this PO, or relating to the Products and/or Services, to the extent reasonably necessary to determine Vendor's compliance with this PO. Vendor will provide THD or its representative conducting the Audit with reasonable assistance. THD's Audit, or failure to conduct any Audit, will not release Vendor from any its obligations.

14. Risk of Loss; Title. All POs for Product(s) purchased from Vendor within Canada will be designated FOB destination unless expressly agreed upon in writing by an authorized employee of THD. For all such POs, no liability will be incurred by THD and risk of loss shall not pass to THD until legal title passes upon carton or item-level receipt into THD's inventory management system via key receipt or other process and acceptance of the Product(s) in good condition by THD at THD's designated final destination. The Product(s) may be required to move through THD transfer locations, but the final destination is the ultimate destination listed on the PO. All POs for Product(s) purchased from Vendor outside Canada will be designated FOB origin unless expressly agreed upon in writing by an authorized employee of THD.

15. Indemnification. Vendor will indemnify, defend, and hold harmless THD, its affiliates, successors and assigns, and their directors, officers, employees, and agents, from any and all liability, losses, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising out of (a) any nonconforming Products or Services; (b) any alleged or actual infringement or misappropriation of any third party's intellectual property rights; (c)

any leak or spill or emission on THD's premises or elsewhere caused by Vendor, its employees, agents or contractors; (d) any breach by Vendor of any term of this PO; (e) personal injury or property damage resulting from any act or omission of Vendor, its contractors, employees, agents, representatives. Vendor shall not settle any claim without THD's consent. If Vendor fails to assume its obligations hereunder within a reasonable time, THD may proceed on its own behalf to defend itself.

16. Force Majeure. A party will be excused from a failure or a delay in performance to the extent caused by events beyond its reasonable control. The party claiming force majeure must (a) make reasonable efforts to remove the cause of its inability to perform or its delay in performance, and (b) give prompt written notice to the other party specifying its nature and anticipated duration. Vendor's economic hardship and changes in market conditions are **not** force majeure events.

17. Remedies. THD may: (a) reject defective Product(s) and/or Services by written notice to Vendor, (b) require Vendor to immediately replace, repair or make good the same, at Vendor's sole cost and expense, (c) terminate this PO and seek damages, (d) return or destroy rejected Product at Vendor's expense, (e) purchase substitute Product(s) or Services from a third party, or (e) require Vendor to procure for THD the right to use infringing product, or modify the Product to remove the infringement.

18. Transfer. Any transfer by Vendor of its obligations hereunder, in whole or part, without THD consent, is null and void.

19. Non-Exclusive-No Minimum. This PO is not an exclusive agreement or volume commitment.

20. Governing Law. The laws of the Province of Ontario and the federal laws of Canada applicable therein (disregarding conflict of law rules) govern this PO. Nothing in this PO operates to detract from or revoke in any way any right, privilege, or remedy THD has under the *Sale of Goods Act* (Ontario), provided that any common law implied warranties and any conditions, warranties, or liabilities under the *Sale of Goods Act* (Ontario) will not apply where such matters are expressly addressed herein and such exclusions are allowed by law. Subject to section 25 of this Agreement, the parties irrevocably attorn to the jurisdiction of the Courts of the Province of Ontario.

21. Publicity. Vendor shall not use the trademarks, trade names, or product names of THD or its affiliates without the prior written consent of THD. If Vendor does so, THD may (a) terminate this PO, in whole or part, without further liability to Vendor; or (b) issue a retraction in Vendor's name or require Vendor to issue a retraction.

22. Waiver. Any waiver of a right or remedy of THD must be in writing and signed by a corporate officer of THD.

23. Notice. Any notice must be in writing and delivered by overnight courier to THD's legal department at 400-1 Concorde Gate, Toronto, Ontario, M3C 4H9.

24. Changes. This PO may be modified only by a duly executed written agreement of the parties.

25. Disputes. The parties agree to attempt to resolve all disputes arising out of or in connection with the PO, or in respect of any legal relationship associated with or derived from the PO, by mediation. If

the dispute cannot be settled by the mediator, the dispute shall be referred to and finally resolved by arbitration under the ADR Institute of Canada's Arbitration Rules in Toronto, Ontario before a single arbitrator selected from among the arbitrators listed on the website of Arbitration Place.

26. Cumulative Remedies. All remedies under this PO are cumulative, not exclusive or substitutive.

27. THD Affiliates. THD's rights under this PO extend to its affiliates. No other third party beneficiaries exist.

28. Independent Contractor. Vendor is an independent contractor. Vendor's employees shall not be deemed employees or agents of THD. This PO shall not be construed as creating a partnership, limited partnership, joint enterprise, agency, employment or fiduciary relationship between the parties.

29. Interpretation. If any term of this PO is held to be invalid, the remaining terms will continue to be valid and enforceable. The headings in this PO are for reference purposes only; they do not affect its meaning or construction.

30. Exclusion of Conventions. The following do **not** apply to this PO: (a) the United Nations Convention on Contracts for the International Sale of Goods of 1980 and (b) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and (c) the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.

31. Survival. The terms of this PO that by their nature should apply beyond its term will remain in effect after its expiration or earlier termination.

32. Compliance with Laws. Vendor agrees that the Products and/or Services provided under this PO will comply with all applicable federal, provincial, state, and local laws, codes, ordinances, rules, regulations and requirements of the country of origin, the country of transit, the country of destination, or any applicable country or jurisdiction (collectively, the "Laws"), including, but not limited to the following (if applicable):

- THD complies with all applicable provincial human rights and discrimination laws.
- Vendor shall also abide by the *Ontario Human Rights Code* and equivalent human rights codes in other Canadian provinces and territories, which, among others, prohibit discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or record of offences.
- Immigration and Refugee Protection Regulations – Section 186(a): Vendor shall provide to THD only workers for whom Vendor has confirmed legal eligibility to perform services in Canada. THD is not responsible for sponsorship of any workers who perform Services for it at the request of Vendor.
- **Foreign Corrupt Practices Act Policy.**

(a) **General.** The U.S. Foreign Corrupt Practices Act (the "FCPA") is a criminal statute which prohibits the corrupt payment of money or giving of things of value, i.e., "bribes,"

to foreign officials in order to obtain or retain business. THD's commitment to the highest ethical standards and to open and fair business conducted worldwide clearly encompasses compliance with applicable U.S. and international laws, including the FCPA. THD's agents should understand that any actions taken by them on behalf of THD in violation of the FCPA create criminal exposure for themselves, THD and, in certain circumstances, its foreign subsidiaries. THD trusts in the integrity of its vendors, service providers and agents and expects each to comply willingly and completely with the FCPA and this Policy.

(b) **Policy.** Vendors may not offer or give anything of value to a foreign official, a foreign political party official, a foreign political party, or a candidate for foreign political office that might be considered a bribe. To the extent permitted by applicable local law and regulation, Vendors may make certain permissible payments under the FCPA relating to the work being performed for THD—expediting or facilitating payments, gifts and entertainment, political contributions and charitable contributions – but only with the approval of a THD Compliance Coordinator (Compliance Coordinator). Vendors must make accurate and complete entries in their records and follow generally accepted accounting procedures as required by local law. Vendors may not make any false or misleading entries on their books and records.

(c) **Sanctions.** Criminal sanctions for violations of the FCPA for individuals include fines of US \$250,000.00 or more (which cannot be reimbursed by the employer/principal) and six years imprisonment. Individuals subject to the FCPA and its penalties include:

- Employees and agents of U.S. companies, regardless of nationality;
- U.S. nationals who are employees or agents of foreign subsidiaries;
- Non-U.S. employees and agents of foreign subsidiaries who perform actions within the United States or use any of the U.S. interstate facilities, e.g., telephone, fax or e-mail, in furtherance of a bribe.

Criminal sanctions for violations of the FCPA for corporations include fines of US \$2,000,000.00 or more.

Companies subject to the FCPA and its penalties include:

- U.S. companies for actions taken by their employees or agents either within or outside of the United States and regardless of the nationality of the employee or agent;
- Non-U.S. companies, e.g., foreign subsidiaries of U.S. companies, for actions taken by their employees or agents that occur in the United States or that include the use of interstate facilities, e.g., telephone, fax or e-mail.

(d) **Adequate Records; Adequate Controls.** The FCPA also imposes a statutory duty on public reporting companies such as THD to maintain accurate books and records and an adequate system of internal accounting controls. This duty also extends to ensuring that the subsidiaries, domestic and foreign, of public companies such as THD also comply with these records and controls requirements.

33. Insurance. Vendor shall maintain at its sole cost Commercial General Liability Insurance, including Products Liability and Completed Operations coverage, on an occurrence basis with limits of \$5,000,000 for property damage and bodily injury or death, with an A+ rated insurer. Such policies shall be primary without right of contribution from THD. A certificate of insurance shall be provided upon demand.

34. Limitation of Liability. EXCEPT FOR BODILY INJURY OR PROPERTY DAMAGE DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THD, THD SHALL HAVE NO LIABILITY WHATSOEVER TO VENDOR OR ITS AFFILIATES IN AN AMOUNT OF DAMAGES IN EXCESS OF THE AMOUNT OF THIS PURCHASE ORDER. THD SHALL HAVE NO LIABILITY IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT (INCLUDING LOSS OF PROFITS AND LOSS OF GOODWILL), OR EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS PROVISION.