

KLEEN CONCEPTS MASTER VENDOR AGREEMENT

This Master Supply Agreement (“Agreement”) is entered into by and between the parties set forth below. The individuals signing this Agreement represent by their signatures that they are authorized to sign on behalf of and to bind their respective companies to this Agreement.

Effective Date:	INSERT
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KLEEN CONCEPTS, LLC (“Company”)	
Signature:	
Print Name:	
Title:	
Date:	
Address of main office:	8388 E. Hartford Drive, Suite 105 Scottsdale, Arizona 85255
Address for Notices to Company:	Same as above
Phone No.:	(480) 515-5576
Fax No.:	(4802) 515-5594

[Vendor Name] (“Vendor”)	
Signature:	
Print Name:	
Title:	
Date:	
Address of main office:	
Address for Notices to Vendor:	
Phone No.:	
Fax No.:	

RECITALS

WHEREAS, Vendor is in the business of supplying certain products as further defined herein; and

WHEREAS, Company and its affiliates desire to purchase products supplied by Vendor on the agreed upon terms set forth herein; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

AGREEMENT

1. **DEFINITIONS.** As used herein, the following capitalized terms shall have the meaning set forth as follows.

1.1. “Acceptance” means that Company has received and accepted delivery of the Products at their final Delivery Destination in accordance with the terms hereof.

1.2. “Commencement of Work” means any steps taken towards the making of the goods described in Company’s Purchase Order.

1.3. “Delivery Destination” means the location, as stated in the applicable Purchase Order, where the Products are to be delivered by Vendor and accepted by Company.

- 1.4. “Defective” means not conforming to the Product Warranty under Section 9.
- 1.5. “Defective Products” means products shipped by Vendor to Company pursuant to this Agreement that are Defective.
- 1.6. “Drop Ship” means that products are sent from Vendor directly to Company’s customers or retailers instead of shipping products directly to Company.
- 1.7. “Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.
- 1.8. “Hazardous Materials” shall mean the definition provided in Title 49, Subtitle B, Chapter 1, Subchapter A, Part 105, §105.5 et al, Code of Federal Regulations.
- 1.9. “SDS” means the Safety Data Sheet, provided by Vendor that contains detailed information designed to provide both workers and emergency personnel with the proper procedures for handling or working with chemical substances. The SDS shall provide information such as physical and chemical data (melting point, boiling point, flash point, reactivity, etc.), toxicity, health effects, emergency and first aid procedures, storage, disposal, protective equipment, routes of exposure, control measures, precautions for safe handling and use, and spill/leak procedures. SDS materials shall contain information in accordance with whichever of the following provides the greater information: (a) the requirements of the laws of the jurisdiction of the Delivery Destination; or (b) the requirements of the U.S. Occupational Health and Safety Administration (g) of the Code of Federal Regulations (including but not limited to the requirement that the information be written in English and contain the name of the chemical (same as on the label); the chemical and common names of the substance; a listing of the ingredients; a statement of the ingredients that are known carcinogens or that present other known hazards; and any specific hazards).
- 1.10. “Nonconforming Product” means any Products received by Company from Vendor that: (a) do not conform to the make, model, UPC, SKU and/or other identifying information used by Company to identify the Products listed in the applicable Purchase Order; (b) do not fully conform to the specifications furnished by Company from time to time; or (c) on visual inspection, Company determines are otherwise Defective. Where the context requires, Nonconforming Products are deemed to be Products for purposes of this Agreement.
- 1.11. “Person” means any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, Governmental Authority or any other entity.
- 1.12. “Products” means any tangible merchandise or items of personal property purchased by Company from Vendor pursuant to this Agreement.
- 1.13. “Purchase Order” means Company’s written request for Products, including the description, quantity, and price, signed by an authorized representative of Company.
- 1.14. “Representatives” means a Party’s affiliates and each of their respective personnel, independent sales representatives, officers, directors, partners, shareholders, attorneys, third-party advisors, successors and permitted assigns.

2. **PRODUCT ORDERS**

2.1. **Product and Price List.** Product specifications and price list shall be detailed in each Purchase Order. Nothing contained in this Agreement shall imply a minimum purchase commitment, a requirements contract or an output contract, and Company shall have no obligation to purchase any amount of Products at any time.

2.2. **Purchase Orders.** Company shall order Products by submitting Purchase Orders to Vendor. All Purchase Orders shall be governed by the terms and conditions of this Agreement and of the Company's Purchase Orders. Company shall not be bound by any terms or conditions of Vendor's order acknowledgement or acceptance forms, invoices, counter offers or other documents, whether in written or electronic form. For the avoidance of doubt, any terms or conditions proposed by Vendor that differ from, modify or are in addition to those contained in this Agreement or the relevant Purchase Order (whichever is latest) shall be void and of no effect whatsoever unless *expressly* consented to by Company in writing and signed by an authorized representative of Company.

By fulfilling Company's Purchase Order, Vendor agrees to ship and invoice Product(s) according to the items, quantities, prices, payment terms, and the destination specified on the Purchase Order. If Vendor notices a discrepancy, it is Vendor's responsibility to contact Company to have such Purchase Order reissued to correct any incorrect/incomplete information before commencement of production. Company will only issue payment for goods and/or services according to quantities, items, prices and payment terms on Company's Purchase Order and has no obligation to honor invoices contrary to these terms.

2.3 **Purchase Order Changes.** Company may make changes to a Purchase Order within the general scope of this Agreement by giving notice to Vendor and subsequently confirming such changes in writing. If such changes affect the cost of the Products, or the time required for performance under this Agreement and the relevant Purchase Order, an appropriate equitable adjustment shall be made. Vendor may not make changes to a Purchase Order without written approval of Company. Nothing in this Section shall excuse Vendor from proceeding with performance of the Purchase Order as modified.

3. **PRICING AND PAYMENT TERMS**

3.1. **Terms of Agreement and Purchase Order Prevail.** The Parties intend for the express terms and conditions contained in this Agreement (including any attached schedules and exhibits hereto, as well as Company's applicable Purchase Order(s) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Agreement, and this Agreement is expressly limited to such terms and conditions.

3.2. **Most Favored Pricing.** Vendor agrees to grant Company prices that are at least equal or more favorable to those offered by Vendor to other customers under similar circumstances and conditions. In the event Vendor grants more favorable pricing to another customer, the parties deem this Agreement or the relevant Purchase Order to be amended, effective immediately, to grant Company the more favorable pricing. Vendor must give Company immediate written notice of such lower prices. The revised pricing will apply to any outstanding Purchase Orders.

3.3. **Price Lock.** The prices offered by Vendor for Products as set forth in individual Purchase Orders shall not increase during the Term, as defined in Section 6.1. Any price changes must be expressly agreed upon in writing, signed by both parties.

3.4. **Invoicing.** Upon shipment of Products, Vendor shall send Company an invoice and any required supporting documentation to the address listed on the first page of this Agreement.

3.5. **Payment Terms.** Company will pay all undisputed invoices within thirty (30) days of receipt, subject to Company's Acceptance of the Products. Company shall be required to make payments only to the extent allowable under applicable law or regulation. Any payments made by Company to Vendor that are later voided, disqualified, disallowed, or declared unlawful by an applicable governmental authority shall be promptly returned and/or refunded by Vendor to Company.

3.6. **Rights of Set-Off.** With respect to any monetary obligations of Vendor to Company, including without limitation, direct and indirect losses, costs and damages resulting from Vendor's failure to timely deliver Products, the failure of any Products to conform to applicable warranties or other breach by Vendor of this

Agreement or a Purchase Order, Company may at any time, as applicable, recover, recoup or setoff such amounts by deducting such amounts from any sums that are due or payable to Vendor under this Agreement. All amounts due from Company to Vendor are net of any indebtedness of Vendor to Company. In addition to any right of set-off, deduction or recoupment provided or allowed by law, Company may, without notice to Vendor, set off against, and deduct and recoup from, any amounts due or to become due from Company to Vendor, any amounts due or to become due from Vendor to Company, including for damages resulting from breaches by Vendor of its obligations under this Agreement or any other agreement between such parties. If an obligation of Vendor is disputed, contingent or unliquidated, payment by Company of all or any portion of the amount due may be deferred until such dispute contingency is resolved or the obligation is liquidated. In the event of Vendor's bankruptcy, if all of the contracts (including this Agreement) between Company and Vendor have not been promptly assumed by Vendor (under applicable law), Company may withhold payment to Vendor for Services previously provided or for Products previously delivered (via administrative hold or otherwise) until the risk of potential rejection and other losses is eliminated.

4. **DELIVERY, ACCEPTANCE & INSPECTION**

4.1. **Time is of the Essence.** Time, quantity, and quality of Products and their deliveries are of the essence and shall take place in accordance with the instructions set forth in a Purchase Order. Vendor shall immediately notify Company of any actual or anticipated delays in performance of Vendor's obligations under such Purchase Order.

4.2. **Shipment.** Shipment of Products shall be in accordance with terms set forth in the Purchase Order. Products must be correctly classified to secure the lowest possible shipment and insurance rates. Vendor shall suitably pack or otherwise prepare for shipment all Products in a proper package or container ("Shipping Container") to prevent damage in transit. To the greatest extent commercially possible, all Shipping Containers shall be of uniform size and content.

4.3. **Packaging.** All Products shall be preserved, packaged, and packed in accordance and compliance with standard commercial practices and applicable laws, customs and regulations.

4.4. **Documentation.** The shipping container containing any Products with Hazardous Materials must state in clear and bold letters "SDS Information Enclosed." Vendor shall ensure that SDS information and documentation is given to Company prior to and accompanying each and every shipment of Products containing Hazardous Materials together with such special handling instructions as may be necessary to advise logistics providers and handlers of the Products of how to exercise the measure of care and precaution that will comply with any applicable laws and prevent bodily injury or property damage in the handling, transportation, processing, use or disposal of the Products, containers and packing. Vendor shall immediately deliver to Company any updated SDS regarding the Products. In addition, all claims of "Organic" ingredients must be accompanied by Organic Certification or it will be held in quarantine until such documentation is provided. No payment shall be made until items are released from quarantine.

4.5. **Labeling.** Vendor must clearly label all Shipping Containers with the Shipping Container number and total number of Shipping Containers in the current shipment (e.g., 1 of 4, etc.). Vendor shall also affix the proper Shipping Label to the outside of the Shipping Container, and comply with all carrier requirements. "Shipping Label" means a clear weatherproof label on the exterior of each package of sufficient size as to be easily ascertainable, and containing at a minimum, the following legibly printed information: (a) the complete address of Vendor and Company; (b) the Purchase Order Number; (c) the name and phone number of Vendor's designated point of contact regarding the shipment (d) the Product/Item Number(s) (e) Product/Item Description(s) (f) Quantity of Pieces in each Shipping Container and (g) Number of Cartons or sub-containers in each Shipping Container. Failure to completely and accurately label each container will be subject Vendor to any labor charges necessary for inspecting and relabeling containers.

4.6. **Drop Ship Orders.** For Drop Ships only, paperwork accompanying the shipment **must not** contain

pricing.

4.7. **Inspection.** Products are subject to Company's inspection and approval or rejection notwithstanding Company's prior receipt of or payment for the Products. Company shall have a reasonable period of time, not to be less than thirty (30) days following delivery of the Products to the Delivery Location ("Inspection Period"), to inspect all Products received under this Agreement and to inform Vendor, in writing, of Company's rejection of any Nonconforming Products. A reasonable amount of additional time shall be allowed for the discovery of latent defects (such as a container dropped during transport), where the external package shows no obvious damage. Company may also return to Vendor any or all units of rejected Products that constitute Nonconforming Products because they exceed the quantity stated in any Purchase Order. If Company rejects any other Nonconforming Products, Company may elect to (a) require Vendor, at Vendor's sole cost, to repair or replace the rejected Products at the location specified by Company (which may include Vendor's location, Company's location or the location of a third party), (b) purchase similar Products from another source (and apply such purchases against Company's quantity requirements hereunder), (c) produce similar Products itself (and apply such production quantities against Company's quantity requirements hereunder), (d) repair the Products itself or have a third party repair the Products, or (e) require Seller to reimburse Company for damages including but not limited to labor and raw materials that are directly caused by the Nonconforming Products, (f) require Seller to refund any or all affected shipments containing such Nonconforming Products, and/or (g) retain the rejected Products; in each case without limiting the exercise by Kleen Concepts of any other rights available to Kleen Concepts under this Agreement or pursuant to applicable law. All returns of Nonconforming Products to Vendor are at Vendor's sole risk and expense. Company's Acceptance of any Products will not be deemed to be a waiver or limitation of Vendor's obligations pursuant to this Agreement (or any breach thereof), including those obligations with respect to Vendor's Product Warranty and Vendor's duty to indemnify Company. For all returned Products, Kleen Concepts shall receive a refund of Kleen Concepts' cost, including shipping and handling costs, for any Nonconforming Products.

4.8. **Testing.** Company may test or inspect all Products delivered, but Company's inspection, testing or payment (or lack of inspection, testing or payment) is not Acceptance of Products or a waiver of any right or warranty and does not preclude Company from rejecting defective Products.

4.9. **Risk of Loss.** Title and risk in the Products shall remain with Vendor until the Products are delivered to, and a delivery receipt is signed by an authorized representative of Company. Vendor will bear all risk of loss or damage with respect to Products until Company's receipt and Acceptance of such Products in accordance with the terms hereof.

4.10. **Rejected Products.** Where Vendor fails to make delivery on any Purchase Order, on or before the specified delivery date or where none is specified, within fourteen (14) days of Vendor's receipt of a Purchase Order, or if all or a portion of the Products are not satisfactory to Company or are not in compliance with the terms of this Agreement or any Purchase Order, then Company may terminate this Agreement or such Purchase Order or any portion of such Purchase Order and return the Products to Vendor at Vendor's sole cost and expense. Company shall have no obligation to accept or pay for replacements for rejected Products unless Company specifically requests in writing that such rejected Products be replaced.

4.11. **Right to Replace.** In addition to any and all of Company's rights provided hereunder and/or by operation of law, Company shall have the right to replace defective and/or Nonconforming Products by obtaining from other Vendors products that are reasonably similar to Vendor's Products. In the event that Company exercises such rights, Vendor shall reimburse and/or pay Company for any and all costs incurred by Company in obtaining the replacement products and any monies paid by Company to Vendor that have not been used by Vendor to produce Products conforming to the specifications set forth in the Agreement and/or applicable Purchase Order.

5. INSPECTION OF VENDOR'S FACILITIES

Vendor agrees to permit access to its facilities, and to ensure Company's similar right to access Vendor's subcontractor facilities and Vendor's supply chain, at reasonable times for inspection of the Products covered under this Agreement. Company shall also have the right to test, at its own cost, the Products to be supplied under this Agreement. Neither inspection at Vendor's facilities nor testing shall constitute Acceptance of the Products. If Company determines that the Products are Nonconforming, Vendor shall be responsible for the payment of all actual and documented costs incurred by Company for testing and inspection.

6. TERM AND TERMINATION

6.1. **Term.** This Agreement shall begin on the Effective Date for and continue for one (1) year unless terminated earlier as provided in this Agreement (the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement will automatically renew for additional successive one (1) year terms unless either Party provides written Notice of non-renewal at least thirty 30 days prior to the end of the then-current term (each, a "Renewal Term" and together with the Initial Term, the "Term"), unless any Renewal Term is earlier terminated pursuant to the terms of this Agreement or applicable law. If the initial Term or any Renewal Term is renewed for any Renewal Term(s) pursuant to this Section 6, the terms and conditions of this Agreement during each such Renewal Term will be the same as the terms in effect immediately prior to such renewal.

6.2. **Termination for Convenience.** Company may terminate this Agreement for any reason or no reason by providing thirty (30) days prior written notice to Vendor.

6.3. **Termination for Cause.** Either party may terminate this Agreement or a Purchase Order immediately if (a) the other party breaches a material obligation of this Agreement that by its nature is incurable; (b) the other party commits a curable material breach of this Agreement, which has not been remedied within thirty (30) days of a written request to remedy the same; (c) a receiver is appointed for the other party or its property; (d) the other party makes an assignment for benefit of its creditors; (e) proceedings are commenced by or for the other party under any bankruptcy, insolvency, or debtor's relief law, or (f) the other party liquidates or dissolves its business or attempts to do so.

6.4. **Effect of Termination or Expiration.** Notwithstanding anything to the contrary in this Section 6, this Agreement shall not terminate or expire so long as any valid and open Purchase Order accepted by Vendor prior to the date of expiration or termination exists unless it too is terminated or expires at the same time as this Agreement. All provisions of this Agreement that by their terms or nature survive termination or expiration of this Agreement, including but not limited to Sections 3, 4, 6.4, 7, 9, 10, 12, 13.3 and 13.4 shall so survive.

7. CONFIDENTIALITY.

The terms and existence of this Agreement and all information arising from or relating to this Agreement or a Purchase Order shall be considered "Company's Confidential Information." Vendor may use Company's Confidential Information only for the purpose of performing its obligations under this Agreement and shall not otherwise disclose Company's Confidential Information to any third party without Company's prior written consent. Upon completion of providing Products, or at Company's request, Vendor shall promptly return all documents and other materials that contain or relate to Company's Confidential Information. Company's Confidential Information does not include information that Vendor can prove is: (a) rightfully known by Vendor before negotiations leading to the initial Purchase Order; (b) independently developed by Vendor without use of Company's Confidential Information; (c) part of the public domain; or (d) is lawfully obtained by Vendor from a third-party without any violation of confidentiality.

While in possession or control of Company's Confidential Information, or any media embodying the same, Vendor shall take reasonable efforts to keep Company's Confidential Information reasonably inaccessible from persons not otherwise authorized to view the Confidential Information.

In the event Vendor is required by law, judicial or governmental order, or other legal process to disclose any of Company's Confidential Information, Vendor shall provide Company with prompt written notice of such request

or requirement so that Company may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In no event shall Vendor oppose action by Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Company's Confidential Information.

At the written request of Company, Vendor will either (i) promptly destroy all Company Confidential Information (including all copies thereof) in Vendor's or its representative's possession and confirm such destruction to Company in writing, or (ii) promptly deliver to the Company at Vendor's expense all Company Confidential Information (and copies thereof) in Vendor's or its representative's possession. In any such event, Vendor and its representatives will not retain any copies, exhibits, notes, summaries, emails, memoranda or other writings prepared by Vendor based on the Company's Confidential Information. Any oral Company Confidential Information will continue to be subject to the terms of this Agreement. However, notwithstanding the above, Vendor shall not be required to return or destroy any such copies of Company Confidential Information or any reports, notes or other material prepared by it or on its behalf that incorporates Company Confidential Information that is required to be retained pursuant to law and/or regulation (provided that Vendor so notifies Company in writing, explaining the reason for retaining the Company's Confidential Information).

8. **COMPLIANCE WITH LAWS**

8.1 **Compliance.** Vendor shall at all times comply with all laws applicable to this Agreement, Vendor's operation of its business and the exercise of its rights and performance of its obligations hereunder. Without limitation of the foregoing, Vendor shall ensure the Products and any related packaging of the Products conform fully to, any applicable law, including, without limitation, the Federal Food and Cosmetic Act, the Fair Packaging and Labeling Act, The Federal Trade Commission Act, Poison Prevention Packaging Act, Occupational Health and Safety Act and California's Prop 65 Act (so as to avoid adding a Proposition 65 warning label on the Products). Upon Company's request, Vendor shall provide Company with (a) written certification of Vendor's compliance with applicable laws; (b) written certification of the origin of any ingredients or materials in the Products; and (c) any additional information regarding the Products requested by Company such that Company may comply in a timely manner with its obligations under law.

8.2 **Permits, Licenses, and Authorizations.** Vendor shall obtain and maintain all Permits necessary for the exercise of its rights and performance of Vendor's obligations under this Agreement, including any Permits required for the import of any raw materials and other manufacturing parts used in the production and manufacture of the Products, and the shipment of hazardous materials, as applicable.

9. **WARRANTIES.**

9.1 **Product Warranty.** Vendor warrants to Company and any end users of the Products that (the "Product Warranty"): (a) for the period provided by applicable law, or for such longer period as provided by Company to its customers or any end users, the Products will: (i) conform, in all respects, to the specifications, standards, approved samples, descriptions, quality requirements, performance requirements, statements of work, and fit, form and function requirements furnished, specified or approved by Company for the Products; (ii) conform with Company's specified quality standards; (iii) be merchantable (as such term is defined in the UCC) and free from defects, latent or otherwise, in design, materials and workmanship; (iv) conform to all brochures, manuals and claims furnished by Vendor to Company; (v) not infringe upon, violate or misappropriate the Intellectual Property Rights of any Person; (vi) be fit and sufficient for the particular purpose intended by Company and its customers, of which the Vendor is aware (and Vendor acknowledges that it knows of Company's intended use of the Products and that such Products have been selected, designed, manufactured or assembled by Vendor based upon Company's stated use and will be fit and sufficient for the particular purposes intended by Company); and (vii) comply with all applicable laws; and (b) each of the Products will be new and conveyed by Vendor to Company with good title, free and clear of all Encumbrances.

9.2 **Additional Terms.** The Product Warranty (a) is in addition to all other warranties, express, implied,

statutory and common law, (b) extends to the Products' future performance, (c) survives Vendor's delivery of the Products, Company's receipt, inspection, acceptance, use of the Products and payment for the Products, and the termination or expiration of this Agreement, (d) inures to the benefit of Company and its successors and assigns and the users of Company's or its customers' products, and (e) may not be limited or disclaimed by Vendor. Company's approval of Vendor's designs, materials, processes, specifications or similar requirements will not be construed to relieve Vendor of any warranties. Any applicable statute of limitations on Company's claims for breach of warranty will commence no earlier than the date on which Company discovers the breach.

9.3. **Transferability.** To the extent that Company resells or otherwise transfers the Products, Vendor and manufacturer's warranties shall be passed through and available to Company's affiliates, customers, or other transferees.

9.4. **Non-exclusive Warranties.** Each of the above warranties shall be construed as conditions as well as warranties, and shall not be deemed to exclude other rights, warranties, or remedies in law or equity, and all such rights, warranties, and remedies are cumulative and may be exercised concurrently or separately.

9.5. **Remedies.** In the event any of the Products supplied by Vendor do not conform to the above warranties and Company rejects the same, Company may, at its option and at Vendor's expense: (a) reduce the quantity of Products ordered under the Purchase Order by the quantity of Nonconforming Products; (b) require Vendor to replace or repair the Nonconforming Products; and/or (c) exercise any other applicable rights or remedies set forth in this Agreement or available at law. If Vendor does not promptly correct defects or replace Nonconforming Products, Company may make corrections, replace those Products or procure another provider to supply such Products and charge Vendor for the costs incurred. If Vendor fails to inform Company in writing of the manner in which Vendor desires that Company dispose of Nonconforming Products within forty-eight (48) hours of notice of Company's rejection of Nonconforming Products (or such shorter period as is reasonable under the circumstances), Company will be entitled to dispose of the Nonconforming Products without liability to Vendor, provided, however, that in any event Company may elect to arrange for the shipment of any Nonconforming Products back to Vendor at Vendor's expense. Vendor will bear all risk of loss with respect to all Nonconforming Products and will promptly pay or reimburse all costs incurred by Company to return, store or dispose any Nonconforming Products. Company's payment for any Nonconforming Products will not constitute Acceptance by Company, limit or impair Company's right to exercise any rights or remedies, or relieve Vendor of responsibility for the Nonconforming Products.

9.6. **Withdrawal or Recall of Products.** If Company, any of Company's customers or any Governmental Authority determines that any Products sold to Company are Defective and a recall campaign is necessary, Company will have the right to implement such recall campaign and return Defective Products to Vendor or destroy such Products, as determined by Company in its reasonable discretion, at Vendor's sole cost and risk. If a recall campaign is implemented, at Company's option and Vendor's sole cost, Vendor shall promptly replace any Defective Products and provide such replacement Products to Company or Company's designee. The foregoing will apply even if the Product Warranty and any other product warranty applicable to the Products have expired. Vendor will be liable for all of Company's costs associated with any recall campaign if such recall campaign is based upon a reasonable determination that the Products fail to conform to the warranties set forth in this Agreement. Where applicable, Vendor shall pay all reasonable expenses associated with determining whether a recall campaign is necessary.

10. **INDEMNIFICATION; REMEDY FOR INFRINGEMENT.**

10.1. **Indemnification.** Vendor shall indemnify, defend and hold harmless Company, its parent, subsidiaries, and affiliates, and each of their respective customers, officers, directors, employees, and agents (the "Company Parties") against any third-party claim, demand, suit, or cause of action (collectively, "Claims") brought against any one of the Company Parties arising out of, resulting from, or related to: (a) any actual or alleged act, error, omission, violation of applicable law or other conduct by Vendor, its employees or agents, including those that result in injury or death to persons and loss of, or damage to, tangible and intangible property; (b) any actual or

alleged inaccuracy or breach of any warranty, representation, covenant or other term made by Vendor in this Agreement; or (c) any actual or alleged infringement of any patent, copyright, trademark, intellectual property right or Vendor's misappropriation of any trade secret or violation of any right of publicity or nondisclosure obligation. Vendor specifically will indemnify the Company Parties against any resulting liability, damages, losses, costs or expenses (including reasonably attorneys' fees and other professionals' fees and expenses) incurred by or awarded against a Company Party as a result of a Claim or agreed to in a settlement and attributable to such Claim. Any breaching party shall be responsible for the attorneys' fees of the non-breaching party in any action brought by the non-breaching party to enforce the terms and provisions of this Agreement.

10.2. Notification and Defense Obligations. Company will promptly notify Vendor of any Claim for which it seeks indemnity under the terms of this Agreement; provided, however, that Company's failure to give prompt notice will not relieve Vendor of its indemnity obligation except to the extent that the Vendor shows that the failure actually prejudiced Vendor. Company will permit Vendor to control, in a manner not adverse to Company, the defense and settlement of any Claim using counsel reasonably acceptable to Company, and Company may employ counsel at its own expense with respect to any Claim. If Company employs counsel due to a Vendor conflict of interest or because Vendor does not assume control of the defense, then Vendor will bear the expense. Company will give reasonable assistance and cooperation to Vendor in the defense of the Claim. Vendor will not admit liability or enter into any settlement that adversely affects a Company Party's rights or interests without Company's prior written approval.

10.3. Remedy for Infringing Products. If Company's purchase or use of Products is enjoined, at Company's option and Vendor's expense, Vendor shall in addition to all other remedies: (a) provide replacement non-infringing Products; (b) modify the infringing Products so the infringement is removed; or (c) refund to Company the purchase price paid by Company for the infringing Products.

10.4. Notice of Infringement. Vendor shall promptly report to Company in reasonable written detail each notice or claim of patent infringement, copyright infringement, trademark infringement, or invasion of any right of privacy of which Vendor has notice or knowledge and which arises out of or relates to this Agreement.

10.5. Litigation Support. In the event of litigation by or against Company or its customer(s) on account of any claim or any investigation of or by Company, Vendor shall: (a) comply with any requests by Company that Vendor implement a legal hold to preserve possible evidence in Vendor's possession, custody or control; and (b) furnish Company upon request all evidence and information in possession of Vendor pertaining to such litigation in the formats requested by Company.

11. INSURANCE

11.1. Insurance Requirements. Insurance coverage by Vendor is an express condition of this Agreement. While providing Products under this Agreement, Vendor shall, at its own expense, obtain and maintain the following Insurance and provide evidence thereof satisfactory to Company: (a) if performing services, including but not limited to installations and deliveries, at Company's location, Workers' Compensation Insurance and Employer's Liability Insurance protecting Vendor and Company from potential Vendor's employee claims based upon job-related sickness, injury, or accident, during performance of services and in amounts as required by law of the Delivery Destination, and in no event less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate; (b) Comprehensive General Liability (bodily injury, property damage, etc.) Insurance with respect to Vendor's agents and company vehicles assigned to the activities performed under this Agreement in a policy limit of not less than one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate; (c) if requested by Company, Errors and Omissions Insurance in the amount of one million dollars (\$1,000,000), protecting Company against Vendor's professional negligence, failure to perform professional duties, and breach of contractual obligations under this Agreement; and (d) Blanket Commercial Umbrella Liability insurance in the amount of four million dollars (\$4,000,000) including but not limited to coverage for Personal Injury Liability, Property Damage Liability, Blanket Contractual Liability and Product Liability, limited to the operations and activities of Vendor under the Purchase

Order.

All required insurance coverages shall be primary coverages regardless of any coverage maintained by Company for any qualifying incident, and shall be issued by companies authorized to do business in the jurisdiction of each respective Delivery Destination.

11.2. **Additional Insureds.** Required insurance policies in this Section 11 shall name as Additional Insureds: Kleen Concepts, LLC.

11.3. **Subrogation.** With the exception of Worker's Compensation and Employer's Liability Insurances, all insurance required to be carried by Vendor shall include a full Waiver of Subrogation in favor of the Additional Insureds whereby Vendor waives any and every claim which arises in its favor and against Company, or against any of the Additional Insureds set forth herein, for any and all loss or damage covered by valid and collectible insurance policies to the extent of the insurance proceeds paid with respect thereto. Company reserves the right to request additional insureds when such are related to the Products being provided hereunder.

11.4. **Retentions.** Insurance retentions shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed ten thousand dollars (\$10,000.00) without the prior written approval of Company.

11.5. **Proof of Coverage; Changes.** Vendor shall maintain coverage for the duration of its providing Products under any Purchase Order and shall at all times be prepared provide Company with evidence thereof upon request. Vendor and/or its insurance carrier shall provide Company with a thirty (30) day advance notice of material policy modification or cancellation.

12. LIMITATION OF COMPANY'S LIABILITY

IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE DAMAGES, OR LOST PROFITS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

13. GENERAL PROVISIONS

13.1. **Relationship of Parties.** In its performance under this Agreement, Vendor is, and will at all times act as, an independent contractor. No partnership, joint venture, agency, or employment relationship is created by this Agreement or any Purchase Order. Neither party shall have the right to obligate or bind the other party in any manner to any third party. Vendor shall be at all times the sole responsible party for the performance of Vendor's obligations under this Agreement and any Purchase Order. All persons employed by Vendor in connection with its obligations under this Agreement shall be the sole and exclusive employees of, and paid by, Vendor. In connection with the employment of its employees, Vendor and any of Vendor's permitted subcontractors shall pay all applicable social security, unemployment, worker's compensation or other employment taxes or contributions of insurance, and shall comply with all federal, state, local, and international laws and regulations relating to employment generally, including without limitation those laws regarding minimum wages, social security, unemployment insurance, healthcare benefits, worker's compensation and immigration.

13.2. **Third Party Beneficiaries.** This Agreement is entered into with Vendor for the exclusive benefit of the parties. This Agreement and transactions contemplated hereby are not intended to benefit any person or entity other than Company and Vendor, nor create any rights, powers or interest in any third-person whatsoever.

13.3. **Non-Solicitation.** For a period of two (2) years following the termination of this Agreement, Vendor shall, directly or indirectly, for itself or on behalf of any other Person: (a) solicit for employment or otherwise induce, influence or encourage to terminate employment with other party, or employ or engage as an independent contractor, any current or former employee of the other party; or (b) solicit business from or induce, influence or

encourage, any client, customer, supplier or other similar third party of the other party to alter, terminate or breach its contractual or other business relationship with Company; or (c) circumvent the other party or any of its Representatives by communicating or conducting business with any of its suppliers, vendors, distributors, dealers, sales agents, brokers, licensors or licensees. Vendor acknowledges and agrees that (a) a breach or threatened breach by Vendor of any of its obligations under this Section would give rise to irreparable harm to Company for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Vendor of any such obligations, Company shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Vendor agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Section 13.3.

13.4. **Non-Circumvention.** For a period of two (2) years following the termination of this Agreement, Vendor shall not, directly or indirectly, for itself or on behalf of any other Person, circumvent Company or any of its Representative by communicating or conducting business with any of Company's suppliers, vendors, distributors, dealers, sales agents, brokers, licensors or licensees.

13.5. **Notices.** All notices required pursuant to the terms and conditions of this Agreement and any Purchase Order shall be in English, and unless an emergency situation dictates otherwise, in writing. All notices and other communications must be delivered to the addresses designated on the first page of this Agreement or as otherwise designated in a Purchase Order. Any notice required to be given shall be deemed to have been given when: (a) received by the party to whom it is directed by hand delivery or personal service; (b) three (3) business days after it is sent by U.S. mail via certified mail-return receipt requested; or (c) one (1) business days after it is sent by national overnight courier such as FedEx® or UPS®, with proof of delivery.

13.6. **Dispute Resolution.** In the event of any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (each, a "Dispute"), the parties hereto shall first attempt in good faith to resolve any Dispute by negotiation and consultation between themselves, including, without limitation, not fewer than three (3) negotiation sessions. If the parties hereto cannot resolve any Dispute after such negotiation sessions, either party may submit the Dispute to a mutually agreed mediation service for mediation administered in Scottsdale, Arizona by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. If the parties hereto cannot resolve the dispute after sixty (60) days from the commencement of mediation, then either party may submit the Dispute to arbitration administered in Scottsdale, Arizona by the American Arbitration Association under its Commercial Arbitration Rules. The award rendered by the arbitrator shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction. Any breaching party shall be responsible for the attorneys' fees of the non-breaching party in any arbitration proceeding with respect to this Agreement.

13.7. **Assignment.** Vendor may not assign its rights, delegate its duties, nor subcontract the providing of any Products under this Agreement without the prior written consent of Company. Any permitted assignment or delegation shall not relieve Vendor of its obligations under this Agreement. With written notice to Vendor, Company may assign any part or all of this Agreement or any part or all of a Purchase Order, including all rights and obligations thereunder, to any parent, affiliate, or subsidiary of Company. Any attempted assignment of this Agreement or a Purchase Order other than that as set forth herein shall for all intents and purposes be void.

13.8. **Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of production facilities, riot, insurrection, or any other cause beyond the reasonable control of such party, and if such party shall have used its best efforts to mitigate its effects, and if

such party gives prompt written notice to the other party, such party's performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Notwithstanding the foregoing, if the period of delay extends beyond thirty (30) days, the other party may terminate the Agreement upon written notice.

13.9. **Waiver.** Waiver of any of the terms of Vendor's obligations shall not be valid unless it is in a writing signed by an authorized representative of Company. The failure of Company to enforce any of the provisions of this Agreement or any Purchase Order, or to require performance of any of its provisions, shall not in any way be construed as a waiver of such provisions, affect the validity of any part of this Agreement or any Purchase Order, or affect the right of Company to thereafter enforce each and every provision of this Agreement or any Purchase Order.

13.10. **Amendment; Modification.** This Agreement shall not be modified or amended except by the express written agreement of the parties, and any other attempt to modify or amend this Agreement shall be null and void, and may not be relied upon by either party. Without limiting section 3.1, any additional, contrary or different terms contained in any Vendor confirmation or other request, writing or communication by Vendor pertaining to this Agreement and/or the sale of Products by Vendor, and any attempt to modify, supersede, supplement or otherwise alter this Agreement, will not modify this Agreement or be binding on the Parties unless such terms have been fully and expressly approved in a writing and is signed by authorized Representatives of both Parties.

13.11. **Severability.** The terms of this Agreement are severable, and the invalidity, illegality, or unenforceability of any provision of this Agreement or any Purchase Order for any reason, shall in no way affect the validity or enforceability of any other portion or provision of this Agreement or such Purchase Order. Any void provision shall be deemed severed from this Agreement or such Purchase Order, and the balance of this Agreement or such Purchase Order shall be construed and enforced as if this Agreement or such Purchase Order did not contain the particular portion or provision held to be void. The parties shall amend this Agreement or such Purchase Order to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

13.12. **Section Headings; Interpretation.** The section headings in this Agreement are inserted for the purpose of convenience and ready reference. They do not purport to define, limit, or extend the scope or intent of the language of the Sections to which they pertain. All references in this Agreement to "Section" or "Sections" without additional identification refer to the Section or Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number, as the circumstances require. The words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement in whole and not to any particular provision.

13.13. **Entire Agreement; and Incorporation.** This Agreement constitutes the entire agreement between the parties related to the purchase of the Products and supersedes any and all prior or contemporaneous understandings, agreements, representations, statements, negotiations, or commitments related to such, whether oral or written. The terms and conditions set forth in Exhibits hereto are hereby incorporated by reference and made a part of this Agreement as if they had been set forth in full herein. Any terms on Vendor's web site, product schedule or other ordering document, or contained in any "shrink-wrap" or "click wrap" agreement, will have no force or effect.

13.14. **Counterparts and Effectiveness.** This Agreement may be signed in counterparts and shall not be effective and binding upon any party until it has been fully executed by all parties.

END.