GENERAL TERMS AND CONDITIONS OF PURCHASE
(VENDOR BUYING AGREEMENT)
1. Introduction

1.1. These General Terms and Conditions of Purchase constitute a binding agreement between Overton’s / Gander Direct and each Vendor which is an integrated agreement consisting of these General Terms and Conditions of Purchase, the Resource Requirement Guide, the EDI Operations Guidelines (for those Vendors using EDI), each Purchase Order issued by Overton’s / Gander Direct to the Vendor and the Vendor Setup Documents (consisting of the Vendor Setup Form, the Return Disposition Agreement and the Resource Allowance Contract) (collectively, the “Vendor Buying Agreement” or “Agreement”).

1.2. Every Purchase Order (“Order”), whether written or electronically transmitted to Vendor, is subject to all terms and conditions contained in the Vendor Buying Agreement, and shall apply to all purchases made by Overton’s / Gander Direct regardless of whether such purchases are for resale (including drop shipments), redistribution or internal use. Vendor acknowledges and agrees that the Vendor Buying Agreement may be amended from time to time by Overton’s / Gander Direct, without prior notice to Vendor, by the posting of amended or revised documents on the website maintained by Overton’s / Gander Direct for the use of Vendors at [www.overtons.com/vendors](http://www.overtons.com/vendors). Each Order shall be governed by the terms of the Vendor Buying Agreement in effect on the date the Order is issued by Overton’s / Gander Direct to Vendor. An Order is void unless issued by Overton’s / Gander Direct or its authorized agent. Vendor is not permitted to initiate an Order.

1.3. The term “Vendor” means the entity or person designated on the Vendor Setup Form and any successor thereof; provided, however, that Vendor shall have no right to assign or delegate its rights or duties under the Vendor Buying Agreement without the prior written consent of Overton’s / Gander Direct, which consent shall be within the sole and absolute discretion of Overton’s / Gander Direct and may be withheld for any reason or no reason.

1.4. By accepting an Order, Vendor acknowledges and agrees to be bound by the Vendor Buying Agreement. Different or additional terms proposed by Vendor, including but not limited to any and all inconsistent terms or conditions contained in Vendor’s invoice, bill of sale or other communication, are expressly rejected by Overton’s / Gander Direct and shall not become a part of the contract between the parties. Any variation, amendment or modification of an Order or the other terms and conditions of the Vendor Buying Agreement must be approved in writing by Overton’s / Gander Direct. The Vendor Buying Agreement
Agreement cannot be modified or amended by the course of dealing between Overton’s / Gander Direct and Vendor.

2. Acceptance of Order

2.1. Each Order shall be deemed satisfactory to and accepted by Vendor according to its terms and the other terms and conditions of the Vendor Buying Agreement if any shipment of merchandise is made or if the Order is acknowledged by Vendor. The stating of additional or different terms or the furnishing by Vendor of additional documents shall not modify the Order unless specifically agreed to in writing by Overton’s / Gander Direct and shall not affect acceptance of the Order by Vendor. There can be no changes or modifications to the Order unless expressly consented to in writing by an authorized agent of Overton’s / Gander Direct. Any communications from Overton’s / Gander Direct in the form of forecasts, commitments, projections or other estimates provided to Vendor are for planning purposes only, do not constitute an Order and shall not be binding upon Overton’s / Gander Direct unless, until and only to the extent that Overton’s / Gander Direct expressly agrees in writing with Vendor that they shall be binding and then become the basis of one or more Orders issued by Overton’s / Gander Direct to Vendor.

2.2. Vendor will acknowledge receipt of each Order in writing to the responsible Overton’s / Gander Direct Purchasing Department within 2 business days of receiving a purchase order. Such acknowledgement may be made by e-mail or other electronic means. Failure to acknowledge an Order, however, shall not be deemed to be a rejection of the Order by Vendor. Vendor cannot reject an Order submitted by Overton’s / Gander Direct unless it has provided at least 90 days prior written notice that it will not accept Orders from Overton’s / Gander Direct after a specified date.

3. Title and Risk of Loss; Shipment Dates

3.1. All Orders will be deemed FOB destination unless expressly agreed otherwise in writing by an authorized agent of Overton’s / Gander Direct. No liability will be incurred by Overton’s / Gander Direct with respect to the Order or the merchandise and risk of loss shall not pass to Overton’s / Gander Direct until legal title passes upon receipt and acceptance of the merchandise in good condition by Overton’s / Gander Direct at the designated shipment destination. Time is of the essence regarding delivery of merchandise to Overton’s / Gander Direct. Overton’s / Gander Direct require strict compliance with any “Ship Not Before” and “Ship No Later” dates contained in an Order. Compliance with the “Ship Not Before” date and the “Ship No Later” date shall be determined by the date of receipt set forth on the applicable forwarder’s cargo receipt, ocean, truck, or domestic bill of lading or airway bill. Vendor shall immediately advise the responsible Overton’s / Gander Direct buyer, identifying the Order number and department number, if any part of an Order cannot be shipped on or before
the “Ship No Later” date. The Order is deemed cancelled without further notice if shipment is not made on or before the “Ship No Later” date. Vendor shall not ship without the written consent of the responsible Overton’s / Gander Direct buyer after the “Ship No Later” date, nor shall Vendor ship before the “Ship Not Before” date without the written consent of the responsible Overton’s / Gander Direct buyer. At Overton’s / Gander Direct option, Overton’s / Gander Direct may accept early or late shipment and pay for merchandise received.

4. Price Warranty

4.1. Vendor warrants that all prices, benefits or allowances for its merchandise to Overton’s / Gander Direct are not less favorable than those prices, benefits or allowances currently extended by Vendor to any other customer for the same merchandise. If there is any reduction in Vendor’s regular selling price for the merchandise before or after shipment, Vendor agrees the price specified on the Order will be reduced to Vendor’s reduced selling price. In the event of such price reduction, the price reduction may, in Overton’s / Gander Direct sole and absolute discretion, be deducted from outstanding or future Vendor invoices, or billed to Vendor for immediate payment. Overtons / Gander Direct shall not be obligated to take a credit from Vendor against future purchases.

4.2. In no instance shall Overton’s / Gander Direct be liable to Vendor in excess of the actual Order price, less applicable discounts and/or other deductions, and no interest or other charges including, but not limited to, handling or freight charges shall be recognized or paid by Overton’s / Gander Direct upon any Order or resulting invoice, whether claimed by reason of late payment, changes to the Order or otherwise. Nothing herein shall permit an increase in the price specified on the Order unless approved in writing and signed by an authorized agent of Overton’s / Gander Direct. A merchandise unit price increase must be approved in writing by Overton’s / Gander Direct and shall become effective 90 days after Vendor’s receipt of such approval, unless otherwise agreed by Overton’s / Gander Direct in writing.

4.3. Vendor shall keep full and accurate books of account and all documents and other materials relating to any merchandise sold to Overton’s / Gander Direct and Vendor’s performance under the Vendor Buying Agreement for a period of not less than two years after each shipment date. Overton’s / Gander Direct, or its authorized representative, shall have the right, upon reasonable notice, to audit and inspect such books, documents and other materials during normal business hours, including the right to make copies, to verify Vendor compliance with all the terms and conditions of the Vendor Buying Agreement. If any audit reveals that Vendor has erroneously charged Overton’s / Gander Direct $1,000 or more, then Vendor shall also reimburse Overton’s / Gander Direct its actual costs incurred in examining Vendor’s books.

5. Warranties and Guarantees
5.1. The warranties and guaranties in this Agreement are in addition to all other express and implied warranties and guaranties and shall run to the benefit of, and shall create direct rights of enforcement and remedy in, Overton's / Gander Direct. The warranties of Vendor shall not be affected or limited in any way by Overton's / Gander Direct extension or non-extension of any express or implied warranties to its customers.

5.2. Vendor agrees that Overton's / Gander Direct shall not be liable for the inspection or packaging of merchandise before resale and that all warranties, representations and conditions, statutory, legal or otherwise and whether express or implied, shall survive inspection, installation, acceptance, and payment by Overton’s / Gander Direct and Overton’s / Gander Direct customers.

5.3. Approval by Overton’s / Gander Direct of Vendor’s designs, materials or packaging shall not relieve Vendor from any obligations under any warranties, representations, conditions or guarantees. Further, whether or not reviewed or approved by Overton’s / Gander Direct, Vendor warrants, represents and guarantees that the design, manufacture and packaging (including all warnings and disclaimers) of Vendor’s merchandise complies with all applicable federal, state, provincial, and local laws, codes, ordinances, rules, regulations and requirements of the country of origin, the country of transit, the country of sale and any other applicable country or jurisdiction (collectively, the “Law” or the “Laws”). Merchandise delivered (whether paid for or not) is subject to inspection, testing at the Vendor’s expense, (once per 12 month period) and approval by Overton’s / Gander Direct before acceptance, but such inspection or testing by Overton’s / Gander Direct is not required. Vendor waives as a defense any duty or obligation of Overton’s / Gander Direct to inspect the merchandise as a condition to enforcing the warranties and guaranties contained in this Section 5.

5.4. Vendor, by accepting the Order, warrants, represents, and guarantees the following:

5.4.1. That the price and other terms and conditions of sale, the terms on which all promotional and advertising matter are furnished by Vendor to Overton’s / Gander Direct, and all guarantees, warranties, labels, packaging, instructions, and warnings furnished in connection therewith, comply with all Laws;

5.4.2. That, if required by Law or legal precedent, the labels, packaging, instructions and warnings accompanying Vendor’s merchandise are multilingual and/or contain universally accepted pictographs or symbols;
5.4.3. That Vendor, if necessary, will supply Overton’s / Gander Direct with any and all instructions, warnings or safety sheets for said merchandise as required by Law;

5.4.4. That the weights, measures, signs, legends, words, particulars, or descriptions, if any, stamped, printed, or otherwise attached to the merchandise or containers (including USA required country of origin markings) or referring to the merchandise delivered hereunder are true and correct and comply with all Laws;

5.4.5. That all merchandise conforms and complies with all applicable Laws, including but not limited to the Consumer Product Safety Act; Magnuson – Moss Warranty Act – Federal Trade Commission Improvement Act; Fair Packaging and Labeling Act; Textile Fiber Products Identification Act; Flammable Fabrics Act; Wool Products Labeling Act; Federal Food, Drug, and Cosmetics Act; Federal Hazardous Substances Act; all Federal Trade Commission Rules and Regulations; all Department of Alcohol, Tobacco and Firearms Rules and Regulations; California Safe Drinking Water and Toxic Enforcement Act (known as “Proposition 65”) and the standards of Underwriters Laboratories, Inc. (including all language requirements) or such other testing laboratory approved by Overton’s / Gander Direct. Vendor agrees to provide Overton’s / Gander Direct with a signed guaranty form with respect to the above warranties if prescribed by any Law as part of Vendor’s invoice before payment is required to be made under the terms of the Order without loss of otherwise applicable discount;

5.4.6. That Vendor has obtained and is in compliance with any license which may be required for the sale or resale of Vendor’s merchandise in each state where Overton’s / Gander Direct does business;

5.4.7. That the merchandise delivered pursuant to the Order does not infringe any actual or alleged patent, design, trade name, trademark, trade dress, copyright, trade secret, other intellectual property or any right or entitlement of any third party;

5.4.8. That all employees, agents or representatives of Vendor performing services for Overton’s / Gander Direct are in compliance with the Immigration Reform and Control Act of 1986 (as amended or revised from time to time, “IRCA”), and Vendor will comply fully with the record keeping and other requirements of IRCA. Overton’s / Gander Direct are not responsible for sponsorship of any workers who perform services for it at the request of Vendor. Vendor will use only workers for whom Vendor has confirmed legal eligibility to perform services as employees in the United States, and for whom all required record keeping under IRCA has been performed and maintained;
5.4.9. That the merchandise is (i) merchantable, (ii) of good quality and workmanship, (iii) free from defects, latent or patent, in material, design and workmanship, (iv) fit, sufficient and safe for its intended purpose and for the particular purpose for which purchased by Overton’s / Gander Direct customers, (v) in compliance in all respects with all specifications, performance standards, drawings, samples or descriptions furnished, specified or adopted by Overton’s / Gander Direct, (vi) in conformity with any samples provided by Vendor to Overton’s / Gander Direct, and (vii) free of any claim of any third party.

6. Indemnification and Product Liability

6.1. Vendor agrees that it shall indemnify, defend, and hold Overton’s / Gander Direct (which for the purpose of Sections 6 and 7 shall include any parent, affiliates, subsidiaries, associates, directors, officers, employees, and agents of Overton’s / Gander Direct) harmless against and from any and all claims, lawsuits, judgments, losses, Recalls (defined below), penalties or actions, costs, liabilities, damages, and expenses (including attorneys’ fees) incurred or to be incurred, which may be threatened, made or brought against Overton’s / Gander Direct by any person, corporation, government, governmental agency, class, or any other entity whatsoever, arising or alleged to have arisen (a) out of the death of or injury to any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions of Vendor, its employees and agents, contractors, subcontractors and/or any other persons for whose conduct it may be or is alleged to be legally responsible or from the merchandise or its use; (b) in connection with the failure or alleged failure of Vendor or any merchandise to fully comply with any warranties, guarantees, or representations of Vendor hereunder, or otherwise; (c) in connection with any promotional or advertising matter, fixtures, displays, guarantees, representations, warranties, labels, and/or instructions, verbal or otherwise, furnished by Vendor or submitted to Vendor by Overton’s / Gander Direct for approval; (d) out of any infringement of any patent, design, trade name, trade dress, trademark, copyright, trade secret, or any other right or entitlement of any third party; (e) out of any environmental, property and/or toxic tort claim, lawsuit, judgment, loss, civil penalty or action; and (f) from the failure of Vendor to comply with any applicable Law. This agreement to indemnify, defend and hold Overton’s / Gander Direct harmless applies whether the claim or loss was alleged to have been caused in part by the negligence or fault of Overton’s / Gander Direct.

6.2. Overtons / Gander Direct shall cooperate in the defense of any claim for which indemnification is sought under this paragraph. Although Vendor shall have control of the defense of any action for which indemnification is sought, Vendor agrees to comply with the following requirements in connection with the conduct of the defense of any claim in which Overton’s / Gander Direct has been named a party: (a) Vendor shall use all reasonable efforts to promptly provide Overton’s / Gander Direct with copies of all pleadings and discovery requests as soon as they are available to Vendor; (b) Vendor shall provide
Overton’s / Gander Direct with copies of all pleadings prior to their filing on behalf of Vendor and Overton’s / Gander Direct shall be given the opportunity to provide comments to any such pleadings; (c) Vendor shall choose defense counsel that is reasonably satisfactory to Overton’s / Gander Direct; (d) Vendor or its representatives will keep Overton’s / Gander Direct or its agents informed of all material information pertaining to a claim; (e) Vendor shall inform Overton’s / Gander Direct of the date of any mediation, arbitration, trial or settlement conference as soon as possible after it receives such information; and (f) Vendor shall inform Overton’s / Gander Direct of the outcome of any mediation, arbitration, motion, trial or settlement or any other matter from which appeal rights could arise.

6.3. Notwithstanding the above, Overton’s / Gander Direct shall have the right, but not the obligation, to participate as it deems necessary in the handling, adjustment, or defense of any claim. If Overton’s / Gander Direct reasonably determines that a defense or defenses are available to Overton’s / Gander Direct that are not available to Vendor and raising such defense or defenses would create a conflict of interest for the counsel defending the claim, Overton’s / Gander Direct will be entitled to retain separate counsel for the purpose of raising these defenses at Vendor’s expense.

6.4. Notwithstanding the above, Vendor shall not enter into any settlement or compromise of a claim that would result in the admission of any liability by Overton’s / Gander Direct, any financial liability on the part of Overton’s / Gander Direct, or would subject Overton’s / Gander Direct to injunctive relief without first obtaining Overton’s / Gander Direct prior written consent.

6.5. Should Vendor fail to assume its obligations hereunder, including its obligation to diligently pursue and pay for the defense of Overton’s / Gander Direct within a reasonable time, as determined by Overton’s / Gander Direct in its sole and absolute discretion, Vendor hereby agrees that Overton’s / Gander Direct shall have the right, but not the obligation, to proceed on Overton’s / Gander Direct own behalf to so defend itself and to require from Vendor reimbursement and indemnification for any and all costs and expenses (including attorneys’ fees) and for any obligations paid by Overton’s / Gander Direct on behalf of Vendor in connection therewith.

6.6. Vendor’s agreement to defend, indemnify and hold harmless Overton’s / Gander Direct under the terms of this Section 6 is independent of and in addition to Vendor’s agreement to procure insurance as required in Section 7. Vendor’s insurer’s position regarding insurance coverage for Overton’s / Gander Direct, as an additional insured, does not in any way modify or limit Vendor’s agreement to defend and indemnify and hold harmless Overton’s / Gander Direct as required in this Section 6.

7. Insurance
7.1. Vendor shall procure and maintain Commercial General Liability Insurance including Products Liability, Completed Operations and Contractual Liability coverage on an occurrence basis with limits of not less than the amount specified on the Insurance Requirements Chart attached hereto for Vendor's insurance category based upon the merchandise sold to Overton’s / Gander Direct by Vendor. A Broad Form Vendor's Endorsement shall be maintained in said insurance policy with Overton’s / Gander Direct, including any parent, affiliates and subsidiaries, named as an additional insured, requiring that Vendor's insurance be the primary policy with respect to any loss. Vendor further agrees to deliver a copy of this General Terms and Conditions of Purchase to its insurer, and as a condition precedent to Overton’s / Gander Direct obligations under the Vendor Buying Agreement, to have delivered to Overton’s / Gander Direct by Vendor's insurer a current Certificate of Insurance, including renewals before the expiration of the then-current coverage, showing the coverage required by this provision as well as a copy of the Vendor’s Broad Form Endorsement, evidencing Overton’s / Gander Direct’s status as an additional insured. Vendor further agrees that upon notice of a claim against Overton’s / Gander Direct involving merchandise sold to Overton’s / Gander Direct that Vendor will immediately and without delay notify all insurance carriers which issued policies to Vendor naming Overton’s / Gander Direct as an additional insured of said claim. Thereafter, Vendor agrees to keep Overton’s / Gander Direct fully informed of all activity, including but not limited to providing Overton’s / Gander Direct with all correspondence, and action taken with regard to any claim by any insurance carrier. All insurance must be written by a United States insurance company which is rated in the most recent edition of Best’s Key Rating Guide (Property Casualty edition) or such other rating agency guide reasonably acceptable Overton’s / Gander Direct as the equivalent of A-VIII or better. Additionally, Vendor and its insurer shall provide to Overton’s / Gander Direct 30 days prior written notice of non-renewal, cancellation or other change in coverage which may impair or otherwise affect Overton’s / Gander Direct rights thereunder. The purchase of insurance and the furnishing of certificates as required herein shall not be in satisfaction of Vendor's obligations under the Vendor Buying Agreement or in any way modify or limit Vendor’s agreement to indemnify, defend, and hold Overton’s / Gander Direct harmless as required in Section 6 herein.

7.2. The provisions of Sections 6 and 7 herein shall be interpreted where possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of Sections 6 or 7 in a specific situation shall not affect the enforceability of these provisions in another situation.

8. Termination, Cancellation, and Returns

8.1. Overton’s / Gander Direct reserves the right to terminate or cancel any Order in whole or in part at any time before receipt of the merchandise without incurring any liability to Vendor. Merchandise in transit at the time of such termination or cancellation shall be returned to Vendor at Vendor’s
expense. Overtons / Gander Direct has no obligation to place Orders with Vendor and may cease to do business with a Vendor in its sole and absolute discretion without cause or notice to Vendor.

8.2. Notice of defects in the merchandise or of any other breach by Vendor under the terms of the Vendor Buying Agreement will be considered made within a reasonable time if promptly made after being discovered by Overton’s / Gander Direct or after notification is given to Overton’s / Gander Direct by its customers or users of the merchandise. The return of such merchandise shall not relieve Vendor from liability or penalties for failure to ship conforming merchandise under the Order or for liability with respect to warranties or conditions express or implied. Failure of Overton’s / Gander Direct to state a particular defect upon rejection shall not preclude Overton’s / Gander Direct from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking, salvaging or cutting up for the purpose of resale or for use shall not be considered as acceptance of the merchandise so as to bar Overton’s / Gander Direct right to reject such merchandise or to revoke acceptance.

8.3. In addition to the terms and rights set forth in Sections 8.1 and 8.2 above, Vendor authorizes Overton’s / Gander Direct to impose penalties, cancel any Order in whole or in part, reject merchandise, refuse to receive merchandise, or return all or part of merchandise, paying only for any part retained at the pro-rated Order rate and returning the balance at Vendor’s expense without Overton’s / Gander Direct incurring any liability to Vendor if, in Overton’s / Gander Direct reasonable opinion:

8.3.1. Vendor fails to comply with any of the terms or conditions of the Order;

8.3.2. Vendor breaches its express warranties, guarantees, or representations set forth in the Warranties and Guaranties Section contained herein;

8.3.3. Merchandise is defective in whole or in part or merchandise is not of merchantable quality or is otherwise not fit for the purposes sold;

8.3.4. Merchandise received is less than or in excess of the quantity, weight or volume provided for in the Order, or varies in any respect from the samples from which or specifications for which the Order was placed;

8.3.5. Merchandise is received before or after the specified delivery dates and times;

8.3.6. Vendor fails to comply with the shipping or invoicing instructions on the Order or contained in the Resource Requirement Guide;
8.3.7. A claim is made that the sale or offer of sale of said merchandise or the use of said merchandise by Overton’s / Gander Direct infringes or would infringe any alleged patent, design, trade name, trademark, copyright, trade secret, intellectual property, right or entitlement of any third party;

8.3.8. Vendor is subject to, voluntarily or involuntarily, a petition in bankruptcy under any bankruptcy law, becomes insolvent, makes any assignment or arrangement with or for the benefit of creditors, or has a receiver or person acting in a similar capacity appointed for it; or

8.3.9. Discontinuance of or substantial interference with Overton’s / Gander Direct business has occurred, in whole or in part, or with respect to the particular store, facility, location or department for which the Order is given by reason of fire, flood, storm, drought, hurricane, earthquake, war, strike, labor dispute, act of God, terrorism, embargo, civil commotion, governmental regulation, or any other cause beyond Overton’s / Gander Direct reasonable control.

8.4. Acceptance of merchandise notwithstanding any of the circumstances set forth in Section 8.3 shall not bind or obligate Overton’s / Gander Direct to accept further deliveries on the Order. Acceptance in such circumstances shall not be construed as a waiver of Overton’s / Gander Direct right to recover penalties, costs or expenses for Vendor’s noncompliance with the Vendor Buying Agreement.

8.5. Cure of nonconforming tender may be made only with the express written consent of Overton’s / Gander Direct.

8.6. Notwithstanding the absence of an exception notation on a freight receipt or any other term set forth in a freight receipt, bill of lading or other shipping document that may be executed upon the receipt of freight by Overton’s / Gander Direct, Overton’s / Gander Direct expressly retains its right to pursue a claim, penalty or charge-back with Vendor for shortage, damage or other defect of delivered freight that comes to Overton’s / Gander Direct attention following the delivery of the merchandise.

9. Recall

9.1. In the event the Consumer Product Safety Commission or other federal, state or local agency (the “Commission”) issues an order pursuant to any consumer protection law (hereinafter referred to as the “Act”) requiring either Overton’s / Gander Direct or Vendor to recall, replace, repair or make refunds with respect to all or part of any merchandise (a “Recall”), Vendor shall do so at its expense (including without limitation, reimbursements to Overton’s / Gander Direct for its “out-of-pocket” expenses) in such reasonable manner as is determined by Vendor (but subject to Overton’s / Gander Direct concurrence
with respect to the manner, which shall not be unreasonably withheld) that will satisfy the requirements of the Act. Where both parties agree or where either party determines in its reasonable discretion that a Recall is warranted prior to or without regard to any proceeding or determination by the Commission, Vendor shall assume all costs and expenses of such Recall (including reimbursement to Overton’s / Gander Direct for its “out-of-pocket” expenses) and such Recall shall be effectuated in a manner agreed upon between Vendor and Overton’s / Gander Direct. For purposes of this Section, “out-of-pocket” expenses shall include any expense incurred by Overton’s / Gander Direct relating to the Recall, including, without limitation, merchandise handling expenses of at least $2,000 per store where merchandise subject to the Recall was sold, plus any direct damages incurred as a result of the Recall. In any event, Vendor shall accept return of all of Overton’s / Gander Direct inventory involved in a Recall and Vendor shall refund to Overton’s / Gander Direct all monies paid for said inventory. In no event shall Vendor treat Overton’s / Gander Direct less favorably than any other customer in the event of a Recall or potential Recall. Nothing contained in this Section shall prevent Overton’s / Gander Direct from taking any actions as may be required of it under the Act and Vendor shall reimburse all costs and expenses incurred by Overton’s / Gander Direct in so doing.

10. Intellectual Property

10.1. Vendor grants to Overton’s / Gander Direct and its affiliates the non-exclusive, worldwide, royalty-free right and license to use and display any product information, data, images, and/or Intellectual Property (defined below) that Vendor furnishes to Overton’s / Gander Direct (the “Vendor Content”). The Vendor Content shall be provided for use by Overton’s / Gander Direct in various marketing and in-store activities including, without limitation, for use on Overton’s / Gander Direct website and catalogues. Vendor acknowledges that Overton’s / Gander Direct are reliant upon Vendor to ensure that all Vendor Content is accurate and complete. Vendor agrees to revise, update, and resubmit Vendor Content promptly upon discovering it is inaccurate or incomplete.

10.1.1. Overton’s / Gander Direct agrees that it will not make modifications or alterations to Vendor’s product specifications, images, intellectual property or product warranty information without prior written approval of Vendor.

10.1.2. Except for the limited license granted to Overton’s / Gander Direct, Vendor retains all right, title and interest in and to the Vendor Content.

10.2. Vendor acknowledges and agrees that all patents, designs, trade names, trademarks, copyrights, trade secrets, or any other proprietary rights or entitlements (“Intellectual Property”) owned or controlled by Overton’s / Gander Direct and/or its affiliates shall be the sole property of Overton’s / Gander Direct and/or its affiliates and that Vendor will assist Overton’s / Gander Direct, or its
agent, in perfecting such Intellectual Property rights by promptly responding to Overton’s / Gander Direct requests for samples, specimens, drawings and/or signed documents. Vendor will not use Intellectual Property of Overton’s / Gander Direct except as specifically authorized by Overton’s / Gander Direct. Vendor shall not sell, give, transfer or otherwise dispose of any merchandise or raw materials using or displaying Intellectual Property of Overton’s / Gander Direct to any person or entity other than Overton’s / Gander Direct without the prior written consent of Overton’s / Gander Direct.

10.3. Vendor understands that, from time to time, Overton’s / Gander Direct and/or other persons acting on its behalf may provide Vendor with suggestions for new products or product improvements. To the extent that Vendor desires to incorporate Overton’s / Gander Direct suggestions, product improvements or Intellectual Property into any product which it sells to Overton’s / Gander Direct or any third party, both Vendor and Overton’s / Gander Direct shall engage in good-faith negotiations for the licensing of any rights necessary to do so. Further, in no event shall Vendor use such suggestions, product improvements or Intellectual Property without notifying Overton’s / Gander Direct and obtaining written approval for such uses. Nothing contained herein shall limit the defense and indemnification obligations of Vendor under Sections 6 and 7 of this Agreement.
11. Confidentiality

11.1. Vendor acknowledges that performance under the Vendor Buying Agreement will give Vendor and its employees and agents access to confidential, proprietary, and trade secret information of Overton’s / Gander Direct ("Confidential Information"). Vendor agrees that it will keep all Confidential Information in strict confidence and not disclose or use the Confidential Information other than to fulfill its obligations to Overton’s / Gander Direct. Vendor shall inform its employees and agents as to the confidential and proprietary nature of the Confidential Information to which they may be exposed and Vendor shall take all necessary action to insure that said employees and agents keep Confidential Information strictly confidential. “Confidential Information” shall mean all information disclosed to, made available to or obtained by Vendor in connection with performance under the Vendor Buying Agreement, and all material and reports prepared by or for Overton’s / Gander Direct, including all information (whether or not specifically labeled or identified as confidential), in any form or medium, that is disclosed to or learned by Vendor in the performance of the Vendor Buying Agreement that relates to the business, products, services, strategy, research or development of Overton’s / Gander Direct or its Vendors, distributors, agents, representatives or customers. Confidential Information further includes, without limitation, the following:

11.1.1. Internal business information (including information relating to strategic and staffing plans and practices, marketing, promotional and sales plans, practices and programs, training practices and programs, cost, rate and pricing structures and accounting and business methods);

11.1.2. Identities of, individual requirements of, specific contractual arrangements with, and information about, Overton’s / Gander Direct Vendors, distributors and customers and their confidential, proprietary or personal information;

11.1.3. Compilations of data and analyses, processes, methods, techniques, systems, formulae, research, records, reports, client or customer names and lists, manuals, documentation, models, data and data bases relating thereto;

11.1.4. Computer software and technology (including operating systems, application software, interfaces, utilities, modifications, macros and their overall organization and interaction), program listing, documentation, data and data bases, and any User IDs and passwords Overton’s / Gander Direct provides Vendor for access to Overton’s / Gander Direct internal systems; and

11.1.5. Trade secrets, trade dress, ideas, inventions, designs, developments, devices, methods, processes and systems (whether or not
14

patentable or copyrighted and whether or not reduced to practice or fixed in a tangible medium) related to Overton’s / Gander Direct business.

11.2. If Vendor receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information, Vendor must promptly notify Overton’s / Gander Direct and tender to it the defense of that demand. Unless the demand has been timely limited, quashed or extended, Vendor will thereafter be entitled to comply with such demand to the extent required by law. If requested by Overton’s / Gander Direct, Vendor will cooperate in the defense of a demand.

11.3. Overtons / Gander Direct is wholly owned by a public company. Vendor acknowledges, and will advise its employees and agents, that federal securities laws prohibit any person who has received material, non-public information concerning the business or operations of Overton’s / Gander Direct from purchasing or selling securities of Gander Mountain Company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

12. In-Store Services

12.1. In the event Vendor and/or its employees and agents provide any in-store services to or for the benefit of Overton’s / Gander Direct or its customers (“In-Store Services”) in any store, facility or other location owned or controlled by Overton’s / Gander Direct , Vendor agrees that the In-Store Services shall be performed and completed in a good and workmanlike manner with the skill and care to comply with all applicable Laws and all applicable rules and regulations of Overton’s / Gander Direct for its own personnel. In addition to the indemnity obligations set forth in Section 6, Vendor shall be fully responsible for the acts or omissions of any employees or agents providing In-Store Services. Vendor shall also have complete responsibility to communicate all necessary and legally required instructions, warnings or safety information regarding the Vendor’s merchandise.

12.2. Vendor, its agents and subcontractors shall maintain Worker’s Compensation Insurance for all of its employees performing the In-Store Services described in this Section to the full extent required by the laws of the states in which such services are being performed.


13.1. Overton’s / Gander Direct employees may not accept any payments, fees, services, special privileges, vacations, pleasure trips, use of recreational facilities or vacation homes, loans, gifts, cash, securities, or other favors from any person or business organization that does or seeks to do business with Overton’s / Gander Direct . Vendors must support and comply with
13.2. All costs and expenses, including but not limited to, attorneys’ fees, incurred by Overton’s / Gander Direct due to Vendor’s violations of or failure to follow any or all of the terms of the Vendor Buying Agreement will be charged to Vendor. In addition, failure to comply with the terms of the Vendor Buying Agreement may be subject to penalties or other charges as set forth in the Resource Requirement Guide chargeable to Vendor. Vendor expressly agrees to reimburse Overton’s / Gander Direct for all such costs and expenses, and pay such penalties upon demand. Vendor further agrees that, at Overton’s / Gander Direct’s sole and absolute discretion, Overton’s / Gander Direct may deduct or recoup such costs, expenses and penalties from any sum then or thereafter owing to Vendor by Overton’s / Gander Direct or may bill Vendor for immediate payment in cash.

13.3. Any and all taxes, fees, impost, or stamps, required by state, federal, local governments, or any such governmental authority in the selling, transferring, or transmitting of merchandise to Overton’s / Gander Direct shall be paid and assumed by Vendor.

13.4. No failure on the part of either party to exercise any of the rights and remedies granted by the Vendor Buying Agreement or to insist upon strict compliance by the other party, and no acceptance of full or partial performance during the continuance of such breach, and no custom or practice of the parties at variance with the terms of the Vendor Buying Agreement, shall constitute a waiver of the right to demand exact compliance with the terms of the Vendor Buying Agreement. A waiver by either party of any specific default shall not affect nor impair the rights of said party with respect to any delay or omission to exercise any rights arising from any other default. Vendor hereby waives use of the Statute of Frauds as a defense to any Order accepted pursuant to this Agreement.

13.5. Overtons / Gander Direct may assign its rights and obligations under the Vendor Buying Agreement to a present or future affiliated entity. Vendor may not assign or delegate any of its rights or duties under the Vendor Buying Agreement without the prior written consent of Overton’s / Gander Direct, which consent may be withheld for any reason or no reason at the sole and absolute discretion of Overton’s / Gander Direct.

13.6. Disputes and Claims

13.6.1. Any dispute arising out of, relating to or concerning the Vendor Buying Agreement or an Order shall, as a condition precedent to any arbitration or court proceeding, be mediated by the parties. The
parties shall mutually agree upon a mediator, and shall schedule and
conduct mediation at a mutually convenient time and place. Each party
shall bear its own costs, fees and expenses associated with such
mediation, except that the parties agree to split equally the costs and
expenses of the mediator and the conduct of the mediation itself.

13.6.2. Any dispute which is not resolved by mediation and which
arises out of relates to or concerns the Vendor Buying Agreement or an
Order may, at the sole option of Overton’s / Gander Direct, be resolved by
arbitration administered by the American Arbitration Association under its
commercial arbitration rules, and judgment on the award rendered by the
arbitrator(s) may be entered in any court having jurisdiction thereof. All
arbitration hearings shall be conducted in St. Paul, Minnesota. Each party
will bear its own costs, fees and expenses associated with any arbitration,
except that the parties agree to split equally the costs and expenses of the
arbitrator or panel and the conduct of the arbitration itself.

13.6.3. In the event Overton’s / Gander Direct does not elect to
submit a dispute to arbitration, the parties agree that any civil action to
decide such dispute shall be brought in either the United States District
Court for the District of Minnesota, or the Ramsey County District Court,
State of Minnesota.

13.6.4. Notwithstanding any applicable Statute of Limitation to the
contrary, Vendor agrees to bring any claim or dispute against Overton’s /
Gander Direct related to the Vendor Buying Agreement or any invoice
issued by Vendor to Overton’s / Gander Direct (including all payment and
credit disputes) within one year after the occurrence of the event giving
rise to such dispute. After the passage of one year all such claims or
rights will be deemed waived by Vendor.

13.7. The laws of the State of Minnesota govern this Vendor Buying
Agreement and all disputes arising out of or relating thereto.

13.8. These General Terms and Conditions of Purchase, together with
the Resource Requirement Guide, the EDI Operations Guidelines, each
Purchase Order issued by Overton’s / Gander Direct to the Vendor and the
Vendor Setup Documents (consisting of the Vendor Setup Form, the Return
Disposition Agreement and the Resource Allowance Contract), including any
applicable exhibits, represent the entire and integrated Agreement between
Overton’s / Gander Direct and Vendor, superseding all prior negotiations,
representations or agreements, written or oral. No changes or modifications to
the terms of the Vendor Buying Agreement are permitted unless made in writing
and signed by the party to be bound thereby.
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<tr>
<th>Overton's / Gander Direct Insurance Category</th>
<th>Overton’s / Gander Direct per Occurrence and Aggregate Limit Requirement</th>
<th>Overton’s / Gander Direct Product Description</th>
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