

PRIVATE LABEL AGREEMENT

This agreement is entered into on this ___ day of ____, 20__ by and between Ace Hardware Corporation (hereinafter "Ace") and _____, a _____ (hereinafter, "Vendor"). The rights and obligations set forth in this Agreement shall be in addition to the rights and obligations set forth in the Ace Hardware Corporation Authorized Vendor Agreement ("Authorized Vendor Agreement") and are not meant to, nor shall they replace any rights or obligations set forth in the Authorized Vendor Agreement. This Agreement is a part of and incorporated into the Authorized Vendor Agreement. To the extent there is any inconsistency between this Private Label Manufacturing Agreement and a provision of the Authorized Vendor Agreement, the terms and conditions of this Agreement shall apply.

Vendor is engaged in the business, among other things, of manufacturing, packaging and selling of products in the following areas (CIRCLE ALL APPLICABLE):

- | | |
|--------------------------------|------------------------|
| ▪ Paint & Cleaning Supplies | ▪ Lawn & Garden/Farm, |
| ▪ Hand Tools | ▪ Auto Supplies |
| ▪ Power Tools | ▪ Pet Supplies |
| ▪ Electrical Fixtures/Supplies | ▪ Sporting Goods, |
| ▪ Plumbing Fixtures/Supplies | ▪ Store&Office |
| ▪ Heating Equipment/Supplies | Fixtures/Supplies |
| ▪ Hardware | ▪ Holiday Items |
| ▪ Building Materials | ▪ OTHER (Please List): |
| ▪ Housewares | _____ |
| ▪ Household Appliances, | |

and Ace is engaged in the retail sale of such products. Ace desires that Vendor manufacture, package and sell to Ace certain products incorporating the Ace trademarks set forth in Schedule A attached hereto and made a part hereof (the "Ace Trademarks") on the label and packaging of such products, and in certain situations on the product itself, in accordance with the terms and conditions of this Agreement, the Authorized Vendor Agreement and the Ace Brand Packaging Guidelines posted online at Vendor.com, a password for which has been delivered separately to Vendor, or a hard copy printout provided, receipt of which is hereby acknowledged.

1. CONSIDERATION

Vendor agrees to manufacture, package and sell solely to Ace and its designees and Ace agrees to purchase from Vendor on a non-exclusive basis, upon the terms and conditions set forth herein, certain products on the list set forth in Schedule B attached hereto and made a part hereof (as amended from time to time to add or delete products) incorporating the Ace Trademarks on the labels and packaging, and in certain situations on the product itself, (the "Products").

2. MANUFACTURING; QUALITY STANDARDS

A. Vendor covenants, represents and warrants that the Products shall pass (i) all standard industry and standard Ace-approved vendor in-process and final quality control tests

and inspections, and (ii) such tests by independent labs as may be required by Ace from time to time.

B. (i) Vendor shall notify Ace at least thirty (30) days prior to implementation of any changes in the manufacturing process, including, but not limited to change of manufacturing facility, product reformulation, manufacturing standards change or sourcing change.

(ii) In addition, on or about January 15th of each year that this Agreement is in effect, Vendor shall supply an affidavit to Ace in substantially the form attached as Exhibit A hereto, specifying the country of origin of the Product, that the Product continues to conform to all Ace specifications and is manufactured, packaged and labeled by Vendor in accordance with all applicable laws, regulations and ordinances of the United States.

C. Vendor represents and warrants to Ace that the Products: (i) will be manufactured, packaged and labeled in conformity with all applicable laws, rules and regulations of the United States; (ii) will meet all quality standards described in the Ace Brand Packaging Guidelines, (iii) will be without defect; (iv) will be good and merchantable for the particular purpose for which they are intended; and (v) will properly use and display the Ace Trademarks.

D. If Ace, in its sole discretion, determines that any batch of Products fails to comply with specifications and/or quality standards or the terms of this Agreement, or makes inappropriate use of an Ace trademark, then Ace shall notify Vendor and (i) Ace shall make no payment on account therefore, (ii) Vendor shall arrange for the return of such Products at Vendor's expense from all locations at which such Products are then located, and (iii) Vendor shall credit Ace for any payments previously made for such batch. If the batch has been delivered to Ace retail stores, Vendor shall arrange for a recall of such batch and restocking with conforming Product at Vendor's expense within thirty (30) days of written notification from Ace to Vendor. In the event that the non-conforming Product poses a threat to health or safety, such recall shall be executed immediately and Ace may remove such Products itself. All non-conforming Product shall be destroyed or, if the non-conforming aspect of the Product is solely based on an inappropriate use of the Ace Trademarks and Ace, in its sole discretion, agrees in writing, Vendor may instead entirely obliterate the Ace Trademarks on such non-conforming packaging, labels and Product such that neither the packaging, labels nor Product is identifiable as Ace merchandise. Ace shall have the sole and unequivocal right to determine if the obliteration is sufficient and, if Ace determines it is not sufficient, such packaging, labels and Product shall be immediately destroyed by Vendor. Vendor shall provide evidence of each instance of obliteration or destruction to Ace within thirty (30) days of a determination of non-conformance. The destruction and obliteration required by this provision shall be done at the sole cost and expense of Vendor. Ace personnel and designees shall have the right to perform site visits to Vendor's facilities (including third party facilities at which such merchandise may be maintained) at any time during ordinary business hours throughout the course of this Agreement for the purpose of ascertaining compliance with the provisions of this paragraph. In addition, the parties agree that Ace's damages associated with non-conforming Product, packaging and labels will be difficult to ascertain and therefore agree that, as liquidated damages and not as a penalty, Vendor will pay Ace the amount of Ten Thousand Dollars (U.S. \$10,000.00) per non-conforming Product SKU which the parties agree reasonably represents such damages.

E. Vendor is prohibited from selling, donating or otherwise distributing any Product or packaging bearing an Ace Trademark in any manner other than to Ace or its designees as set forth in this Agreement.

3. PACKAGING

A. The Products will be packaged in containers bearing labels supplied by Vendor with Ace-provided or Ace-approved design. All Products shall be packaged and prepared for shipment to prevent damage or deterioration and in accordance with the specifications and all applicable laws, rules and regulations of the United States and shall include, without limitation, all text, warnings, cautions and technical information required by law, rule or regulation. Except where required for compliance with law, Vendor's name shall not appear on the Products or on any label or packaging for the Products. It is the sole responsibility of Vendor to ensure that the Products comply with the specifications and/or quality standards set forth in the Ace Brand Packaging Guidelines.

B. After obtaining Ace's approval, Vendor shall prepare all initial mechanical drawings, color comprehensions, final working negatives or positives, including the Ace Trademarks in respect of labels and packaging of the Products (hereinafter referred to as the "Artwork"). Vendor shall provide a proposed final PDF version of the packaging to Ace in the form of an Adobe Illustrator EPS file with die line, artwork and all supporting files for review by Ace. Vendor shall bear all costs related to the set-up of the Artwork and the costs of any future changes to the Artwork or label or packaging whether such changes are required by regulations or law, are changes agreed to by the parties, or are changes required by Ace. This PDF approval is an interim approval and is subject to the final approval by Ace of the Proof (as defined in paragraph C below) prior to final printing.

C. Subsequent to PDF approval and before initial printing, Vendor shall provide a press proof or match print ("Proof") of the proposed Artwork to Ace for Ace's final review. Vendor shall not affix the Artwork to the labels and packaging of the Products until Vendor has received Ace's final written approval of the Proof (the "Final Art"). No changes may be made to the Final Art by Vendor. Vendor shall ensure that the product packaging complies strictly with the Final Art, unless otherwise expressly authorized in writing by Ace. The review and approval by Ace of the Artwork shall not relieve Vendor of its obligations pursuant to Section 3.A. or of its indemnity obligations under this Agreement.

D. In the event that the final printed version of any aspect of the product packaging deviates from the Final Art, Vendor shall have sixty (60) days to supply Product with conforming packaging at Vendor's sole expense and shall, at Vendor's sole cost and expense (i) remove all Product in non-conforming packaging from all Ace warehouses and retail outlets, (ii) destroy all non-conforming packaging and provide Ace with certificate of destruction in form and substance satisfactory to Ace, and (iii) restock all locations with Product in conforming packaging. In addition, the parties agree that Ace's damages associated with non-conforming packaging will be difficult to ascertain and therefore agree that, as liquidated damages and not as a penalty, Vendor will pay Ace the amount of Ten Thousand Dollars (U.S. \$10,000.00) per non-conforming Product SKU which the parties agree reasonably represents such damages.

4. ACE TRADEMARKS

A. Ace represents that the Ace Trademarks to be incorporated onto Products, Product labels and/or Product packaging are exclusively owned by Ace in the jurisdictions in which the Products will be sold by Ace. In the event that Vendor becomes aware of any unauthorized third party use of the Ace Trademarks or trade dress, Vendor shall promptly bring such unauthorized use to the attention of Ace and shall assist Ace in identifying an issues related to counterfeit goods. Ace shall have the sole right and discretion to bring infringement or unfair competition proceedings involving the Ace Trademarks and the Products' trade dress.

B. Vendor acknowledges that the Ace Trademarks are the sole and exclusive property of Ace, that Vendor shall not acquire a proprietary interest in the Ace Trademarks or any other product specific logos, slogans, and other intangibles relating to the Products, and that all use of the Ace Trademarks and trade dress by Vendor shall be for, and inure to the benefit of, Ace. Vendor agrees that it will not (i) dispute Ace's ownership of the Ace Trademarks, (ii) do anything inconsistent with Ace's ownership of the Ace Trademarks, or (iii) use any trademarks that are substantially similar to the Ace Trademarks for any of Vendor's products or services. Vendor will take no action that will or could reasonably be expected to jeopardize or affect the validity of the Ace Trademarks or trade dress or Ace's rights in the Ace Trademarks and trade dress. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

C. Upon receipt of a notice of termination of this Agreement, Vendor shall immediately discontinue the manufacture, packaging and labeling of the Products and immediately discontinue all use of the Ace Trademarks and trade dress and shall not substitute therefore or otherwise use any trademark confusingly similar thereto. Vendor shall hold all Products, packaging or other printed materials bearing the Ace Trademarks for Ace's instructions as to their disposition and shall not use the same for the benefit or account of Vendor or anyone other than Ace.

5. CONFIDENTIALITY

A. Any proprietary information and data obtained by or disclosed to Vendor from or by Ace or any Ace retailer, or their respective subsidiaries, affiliates, employees, agents or representatives, whether by written or non-written disclosure, shall be deemed confidential information and shall be maintained in confidence by Vendor and shall not be disclosed to third parties or used by Vendor except on Ace's behalf, or as may be required by law.

B. Any proprietary information and data obtained by or disclosed to Ace from or by Vendor relating exclusively to Vendor's business, whether by written or non-written disclosure, shall be deemed confidential information and shall be maintained in confidence by Ace and shall not be used by Ace or disclosed to third parties except as may be required by law.

C. The obligations of confidentiality and non-use set forth at paragraphs A and B above shall not extend to any information or data which is already publicly available or which becomes publicly available without breach of this Agreement.

D. Neither party shall communicate with or release information to any form of media, including print or electronic media, regarding the other party, without prior written approval of the party.

6. INDEMNITY

A. Ace shall indemnify, hold harmless and defend Vendor, and its officers, directors, employees and agents, from and against any and all losses, damages, demands, claims, suits and other liabilities (“Claims”), including settlement amounts, reasonable legal fees and other expenses of litigation arising from third party allegations of infringement of any trademark, trade dress, copyright or other intellectual property right of any third party, based on the use of the Ace Trademarks in conjunction with the Products; provided, however that Ace shall have no liability hereunder in respect of any Claim to the extent that such Claim arises from the negligence or malfeasance of Vendor, its officers, employees, agents or contractors or any party acting by, though or on behalf of such persons.

B. Vendor shall indemnify, hold harmless and defend Ace, its retailers and their respective officers, directors, employees and agents from and against any and all Claims including settlement amounts, reasonable legal fees and other expenses of litigation arising out of third party allegations regarding (i) bodily injury or property damage caused by any use, possession, consumption or sale of the Products; (ii) the infringement or alleged infringement of any trademark, trade dress, copyright, trade secret or any other intellectual property right, provided such claims fall outside the scope of the Ace indemnity set forth at paragraph A above; (iii) Vendor’s breach of third party contracts for goods and services whether related to the Products or otherwise; (iv) Vendor’s breach of any obligation under this Agreement; and (v) Vendor’s breach of any representations and warranties contained herein, including but not limited Vendor’s representation that the Products be manufactured, packaged and labeled by Vendor in accordance with all applicable laws, regulations and ordinances of the United States.

C. The indemnifying party may choose counsel subject to the reasonable approval of the indemnified party. The indemnifying party’s obligations under this Agreement are conditioned upon (i) the other party’s giving prompt, written notice of a claim (but only to the extent that indemnifying party’s rights have been prejudiced a delay in giving of notice); (ii) the indemnifying party having sole control of the defense and settlement of a claim except that the indemnifying party may not settle any claim in a manner that would adversely affect the indemnified party’s rights, reputation or interests without the prior written consent of the indemnified party (which shall not be unreasonably withheld); and (iii) the indemnified party’s cooperation with the indemnifying party, at the indemnifying party’s expense, in the defense and settlement of the claim, as the indemnifying party may reasonably request.

The party seeking indemnification shall have the right to participate in the defense thereof with counsel of its choosing at its own expense and, in the case that the indemnifying party is not adequately or promptly defending the claim, or there is a conflict of interest between the indemnified and the indemnifying party, the indemnified party shall, after reasonable notice and opportunity for indemnifying party to cure such condition, have the right to assume the defense with counsel of its own choosing at the expense of the indemnifying party.

Notwithstanding anything herein to the contrary, Ace shall, upon written notice to Vendor have the right to assume the defense of any Vendor-indemnified claim that involves the Ace Trademarks or that, in Ace's sole judgment, affects the good will or reputation of Ace, with counsel of Ace's own choosing at Vendor's expense upon written notice to Vendor. In the event Ace assumes control of the defense, Vendor shall fully cooperate with Ace at Vendor's own expense.

Notwithstanding anything herein to the contrary, the provisions of this Section 6 shall survive the expiration or termination of this Agreement. The indemnity obligations contained in this Agreement shall be in addition to and shall supplement the indemnity obligations contained in other sections of the Authorized Vendor Agreement.

7. TERM AND TERMINATION

A. Unless earlier terminated as specified below, this Agreement shall commence on the date first above written (the "Effective Date") and shall continue for a period of five (5) years from the Effective Date, automatically renewing for successive one (1) year periods thereafter. This Agreement may be sooner terminated by either party (i) upon ninety (90) days prior written notice to the other party or (ii) immediately in the event of insolvency of the other party, or upon the appointment of any Receiver or Trustee to take possession of the property of the other party, (iii) immediately upon notice of change pursuant to Section 2.B. (i) above, or (iv) three (3) business days after notice by one party to the other of a material breach of any of the provisions hereof by the other party if such breach is not cured within such three (3) business day period. The expiration or termination of this Agreement for any reason whatsoever will not relieve either party from its obligations to perform in accordance with the terms and conditions of this Agreement pursuant to any orders or shipments received and accepted prior to the effective date of such termination or expiration.

B. Upon termination, Vendor shall discontinue use of Ace Trademarks and shall submit a report to Ace detailing remaining inventory of Ace branded Product and Ace-branded Product packaging in its possession. Ace shall, at its sole discretion, direct Vendor to either (i) destroy all such Product and packaging, which Vendor shall promptly do and supply Ace with a certificate of destruction with respect to same, or (ii) deliver such packaging to Ace for a sum to be negotiated in good faith for same. In no event will Ace purchase a supply of unused packaging or Product in excess of sixty (60) day inventory or unused packaging or Product which contains Vendor's name, street or e-mail address, telephone number or web site location.

8. REMEDIES

Ace reserves the right to pursue all remedies at law or in equity for any breach of this Agreement by Vendor.

9. ASSIGNMENT

Neither party hereto may assign, by operation of law or otherwise, its rights or delegate its obligations under this Agreement without the prior written approval of the other party. Any attempted assignment or delegation by either party without such approval shall be void and subject to immediate termination of this Agreement by the other party.

10. NOTICES. All notices and other communications required or permitted to be given or made pursuant to this Agreement will be in writing and will be effective when (i) personally given or made, or (ii) delivered by facsimile, or (iii) delivered by commercial overnight courier, or, if an e-mail address is provided in the addresses below or subsequently provided specifically for the purpose of giving notices under this Agreement, when (iv) delivered by e-mail with a delivery receipt to sender to the following address:

If to Vendor:

With a copy to:

If to Ace:

ACE HARDWARE CORPORATION
2200 Kensington Court
Oak Brook, IL 60523
Attn: _____

With a copy to:

ACE HARDWARE CORPORATION
Law Department
2200 Kensington Court
Oak Brook, IL 60523
Attn: General Counsel
Facsimile number (630) 990-6856

11. INDEPENDENT PARTIES

This Agreement shall not create an employer/employee or principal/agent relationship between the parties, who will operate as wholly independent companies. This Agreement shall not be construed as binding the parties as partners or as creating any other form of legal association, which would impose liability upon one party for the act or failure to act of the other. The relationship of the parties shall at all times be that of buyer and seller and neither party shall have authority to make any commitment on behalf of the other party. Further, each party is solely responsible for the acts of its respective employees and agents, including without limitation, any negligent acts or breach of an obligation of confidentiality hereunder.

12. MISCELLANEOUS

This Agreement, along with its Schedules, Exhibits, the Ace Brand Packaging Guidelines and the Authorized Vendor Agreement, contains the entire agreement between the parties relating to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings,

whether written or oral. This Agreement may not be amended except in writing and signed by the parties. A waiver of any default or covenant by a party hereunder shall not be deemed to be a continuing waiver or a waiver of any other covenant or default or any other term or condition, but shall apply solely to the instance to which the waiver is specifically directed. If any provision hereof is determined to be illegal, against public policy, or otherwise unenforceable, it shall not in any way invalidate or render unenforceable any other provision hereof, and each such provision shall at all times be considered separate and severable in this regard. The title of the Agreement and the headings of its sections are included for convenience, and shall not affect the interpretation or meaning of the Agreement or the applicable section. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois (without giving effect to the choice of law provisions thereof).

IN WITNESS WHEREFORE, the parties have executed this Agreement on the date first above written.

ACE HARDWARE CORPORATION

INSERT VENDOR'S NAME HERE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Schedule A

ACE TRADEMARKS

**TO BE USED AS SPECIFIED IN THE ACE BRAND PACKAGING GUIDELINES
(POSTED ONLINE AT VENDOR.COM OR AS SPECIFIED BY WRITTEN MEMO
PROVIDED TO VENDOR)**

Ace



INSERT OTHER TRADEMARKS AS RELEVANT TO SPECIFIC PRODUCT
BELOW

SCHEDULE B

INSERT THE MERCHANDISE CLASS GUIDE HERE

**INSTRUCTION TO BUYER: CHECK ALL APPLICABLE MERCHANDISE CLASSES
OF PRODUCTS TO BE PURCHASED FROM VENDOR UNDER THIS AGREEMENT**

CERTIFICATE OF COMPLIANCE

I, the undersigned, _____, do hereby swear and certify as to the following:

1. I am [TITLE] of [VENDOR CORPORATE NAME] (“Vendor”), with authority to make the certification set forth in this Certificate of Compliance.
2. Vendor and Ace Hardware Corporation (“Ace”) are parties to a Private Label Agreement dated _____, 20__ (the “Agreement”), under which Vendor manufactures, packages and sells to Ace certain products incorporating or bearing Ace’s trademarks (the “Products”).
3. Under the Agreement, Vendor must certify annually as to (a) the country(ies) of origin of the Products, (b) the Products’ compliance with Ace’s specifications and (c) Vendor’s compliance with certain statutes and regulations relating to the Products.
4. On Vendor’s behalf, I certify the following:
 - a) All Products conform to Ace’s specifications for them;
 - b) All Products and their packaging are marked and labeled in accordance with U.S. laws and regulations, including but not limited to the country of origin marking requirements of Section 304 of the Tariff Act of 1930, as amended (19. U.S.C. 1304), and the marking/labeling requirements of the Federal Trade Commission, Department of Transportation, and Environmental Protection Agency; and
 - c) **CHECK (i) OR (ii) BELOW:**
 - (i) _____ There have been no changes in the Products, their packaging, the country of origin of such Products or Vendor’s compliance with the terms and conditions of the Agreement since Vendor’s prior Certificate of Compliance dated _____, 20__;

OR

(ii) _____ The following changes have occurred in the packaging or other information with respect to the Products:

A. Each Product listed on the attached Schedule A has a different country of origin than the country of origin last reported to Ace in writing.

PLEASE NOTE: CHANGED COUNTRY OF ORIGIN MUST BE IMMEDIATELY REFLECTED ON PACKAGING. BY SIGNING THIS AFFIDAVIT, YOU ARE ATTESTING THAT CURRENT PACKAGING ACCURATELY REFLECTS SUCH COUNTRY OF ORIGIN.

B. Other Changes:

- a. _____
- b. _____
- c. _____

I declare that the information provided in this affidavit is true and correct.

Date: _____

[Name]

[Title]

SCHEDULE A

**Changes to Product Countries of Origin
and
Details Regarding Other Changes Noted on Vendor's Certificate of Compliance**