

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BLITZ U.S.A., INC., *et al.*,¹

Debtors.

) Chapter 11

) Case No. 11-13603 (PJW)

) (Joint Administration Requested)

BLITZ, U.S.A., INC, *et al.*,

Plaintiffs,

vs.

) Adv. Proc No. 11-53578 (PJW)

TABITHA ALEXSON AS NATURAL
GUARDIAN AND NEXT FRIEND FOR ETHAN
GROOMS; JASMINE ALEXIS BALLEW, A
MINOR, BY AND THROUGH HER GUARDIAN
AD LITEM, KAREN BRITT PEELER AND
JASMINE BALLEW; JERRY C. BARNETT AND
DANIEL R. FULTON; MIGUEL BARRERA,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
SIXIA LFREDO BARRERA; LONDON
BEADORE, BY AND THROUGH HIS PARENTS,
PAUL BEADORE AND MELISSA WEEKS, AND
MELISSA WEEKS, AND PAUL BEADORS,
INDIVIDUALLY; CHRISTOPHER BOSSE;
AMANDA BURCH, INDIVIDUALLY AND AS
NEXT FRIEND AND NATURAL GUARDIAN
FOR TIMOTHY BURCH; CHRISTOPHER
DRONEY; JESSICA FENN AND JEREMIAH
FENN, SR., INDIVIDUALLY AND ON BEHALF
OF THEIR DECEASED SON AND DAUGHTER,
JEREMIAH FENN, JR. AND JA'EL FENN;
KAYLEE FREELAND, A MINOR; CHAD
FUNCHESS; KAREN GUENIOT-KORNEGAY,
INDIVIDUALLY, AND ON BEHALF OF ALL OF
THE WRONGFUL DEATH BENEFICIARIES OF
MATTHEW DYLAN KORNEGAY; WADE

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Blitz U.S.A., Inc. (8104); LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); and F3 Brands, LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW, Miami, OK 74354.



GUILFORD; ROBERT JACOBY; RANDALL)
JOHNSON; CARMEN LOPEZ AND SANTIAGO)
ROSA, GUARDIANS AD LITEM FOR JESUS)
SANTIAGO ROSA, CARMEN LOPEZ AND)
SANTIAGO ROSA IN THEIR OWN RIGHT, AND)
JESUS SANTIAGO ROSA, IN HIS OWN RIGHT;)
MARY JO PIERCE FOR B.P., A MINOR, BY HIS)
MOTHER AND NATURAL GUARDIAN;)
SHERRI PURVIS INDIVIDUALLY AND AS)
NEXT FRIEND AND NATURAL GUARDIAN)
FOR JAMES C. PURVIS; LORI SHICKEL, BOTH)
INDIVIDUALLY AND AS MOTHER AND NEXT)
FRIEND OF JORDAN SHICKEL, A MINOR;)
ROBYN SMITH, FOR DEVAN VANBRUNT, A)
MINOR, BY HIS MOTHER AND NATURAL)
GUARDIAN; STATE FARM LLOYDS, AS)
SUBROGEE OF ERIC AND TAMMY BALCH;)
DENNIES THORNTON, A MINOR, BY AND)
THROUGH HIS NEXT FRIEND AND FATHER,)
DAVID THORNTON; DYLAN J. TREVINO, A)
MINOR, SUING BY HIS NEXT FRIEND AND)
GUARDIAN, DIANA TREVINO, AND DIANA)
TREVINO, INDIVIDUALLY; KENNETH WARD)
AND CURTIS WARD; RICHARD L YIM, JR.; and)
JOHN DOES 1-1000,)

Defendants.)
_____)

**DECLARATION OF JAMES R. KING IN SUPPORT OF BLITZ U.S.A., INC.'S
MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION STAYING THE PCGC LITIGATION AND FUTURE PCGC ACTIONS
AGAINST WAL-MART, INC. AND BLITZ'S OTHER RETAILERS**

I, James R. King, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am appearing on behalf of Blitz U.S.A., Inc. (“Blitz”) and submit this declaration in support of Blitz’s Motion for a Temporary Restraining Order and Preliminary Injunction Staying the pending litigation (hereinafter the “PCGC Litigation”) involving Portable Consumer Gasoline Containers (“PCGC”) and Future PCGC Actions Against Third-Party Defendants (as defined below).

2. Since September, 2010, I have served as General Counsel to Blitz. During this period of time, I have been responsible for the oversight and management of PCGC claims on behalf of Blitz.

3. The chart attached hereto as **Exhibit A** identifies the thirty-six personal injury and wrongful death cases currently pending against Blitz, Wal-Mart Stores, Inc. and other Wal-Mart defendants (hereinafter "**Wal-Mart**"), Kinderhook Industries, LLC and one of the funds for which it serves as manager, Kinderhook Capital Fund II L.P., (collectively "**Kinderhook**"), and/or other defendants including certain other alleged resellers of Blitz PCGCs (collectively other than "**Blitz**," the "**Other Defendants**"). Two of the thirty-six cases are pending against Wal-Mart (or others) but not Blitz, although the cases have to do with Blitz PCGCs. The chart identifies for each case: the plaintiff(s), the defendants(s), date of alleged injury, the date of filing, venue and case number, case status and trial date, if any. The chart is based upon my personal knowledge as Blitz's chief internal legal counsel and my review of the pleadings, discovery, and any court orders in each case.

4. Blitz PCGCs contain a warning, which is embossed in elevated plastic on one side of the can, and states as follows:

DANGER - EXTREMELY FLAMMABLE
VAPORS CAN EXPLODE
HARMFUL OR FATAL IF
SWALLOWED

IF SWALLOWED, DO NOT INDUCE VOMITING.
CALL PHYSICIAN IMMEDIATELY - KEEP OUT
OF REACH OF CHILDREN - AVOID PRO-
LONGED BREATHING OF VAPORS - DO NOT
SIPHON BY MOUTH - DO NOT STORE IN
VEHICLE OR LIVING SPACE - STORE AND
USE IN WELL VENTILATED AREA - VAPORS
CAN BE IGNITED BY A SPARK OR FLAME
SOURCE MANY FEET AWAY - KEEP AWAY

FROM FLAME, PILOT LIGHT, STOVES,
HEATERS, ELECTRIC MOTORS, AND OTHER
SOURCES OR IGNITION - KEEP CONTAINER
CLOSED - PLACE CONTAINER ON GROUND
WHEN FILLING

5. Blitz's website includes a separate section, titled "Safety Awareness," which warns that "Gasoline is dangerous and extremely flammable. Carefully read all cautions on all sides of gasoline containers. Review and adhere to the following safety precautions when using your portable fuel container: - KEEP OUT OF REACH OR USE BY CHILDREN! ... - NEVER USE GAS TO START A FIRE. May cause severe injury or death - KEEP AWAY FROM HEAT SOURCES ... - Vapors can be ignited by a spark or flame source many feet away..." Blitz's "Safety Awareness" section also directs individuals to www.burnawarenessweek.org for more information on gasoline safety awareness. A true and complete copy of this section of Blitz's website is attached as **Exhibit B**.

6. PCGCs are manufactured in accordance with standards promulgated by the American Society for Testing and Materials ("ASTM"), including ASTM F852 (Standard Specification for Portable Gasoline Containers for Consumer Use), ASTM F839 (Standard Specification for Cautionary Labeling of Portable Gasoline Containers for Consumer Use) and ASTM F2517 (Standard Specification for Determination of Child Resistance of Portable Fuel Containers for Consumer Use).

7. To date, Blitz has tried two PCGC cases to verdict. The first case, *Rene Green v. Blitz U.S.A., Inc.*, No. 2:07-cv-372 (N.D. Texas, Marshall Division) (*Green*) was tried to a defense verdict in Marshall Texas in 2008. The second case, *Calder v. Blitz, USA, Inc.*, No. 2:07-cv-00387 (Dist. Utah), was tried before a jury in November, 2010. The jury in *Calder* found that Blitz was 70% liable for the plaintiff's and deceased's injuries, and that plaintiff, Mr.

Calder, was 30% liable. The jury awarded plaintiff a total of \$6.2 million in damages. After apportionment of fault, Blitz's share of the *Calder* judgment was approximately \$4.32 million. Blitz has appealed this decision to the United States Circuit Court of Appeals for the Tenth Circuit.

8. In recent years, Blitz's insurance carriers settled several lawsuits. Wal-Mart and other retailers are insureds under Blitz's commercial liability insurance policies. If the PCGC Litigation is allowed to proceed only against Wal-Mart or the Other Defendants, coverage otherwise available to Blitz could be depleted in defending or settling matters for Wal-Mart which could be defended or settled on behalf of both Blitz and Wal-Mart (or other retailers).

9. A true and complete copy of the complaint from the case captioned *Karen Gueniot-Kornegay and the Wrongful Death Beneficiaries of Matthew Dylan Kornegay v. Blitz U.S.A., Inc., Wal-Mart Stores, Inc., and Discovery Plastics, L.L.C.*, No. 3:10-cv-429 (S.D. Miss) is attached as **Exhibit C**.

10. A true and complete copy of the complaint from the case captioned *Kenneth and Pam Crouch, individually and as Next Friends of Brooke Crouch, a Minor v. Blitz U.S.A., Inc.*, No. 5:11-cv-00150 (E.D. Tex.) is attached as **Exhibit D**.

11. Of the thirty-six suits pending against Blitz and/or the Other Defendants, 14 have trial dates. Of the impending trials (those scheduled up to and including July 24, 2012), eight - *Bosse, Funchess, Thornton, Alexson, Trevino, Jacoby, Lloyds and Droney* - are pending against Blitz and one or more of the Other Defendants. These actions threaten Blitz with imminent, irreparable harm.

12. Blitz sells its PCGCs through retailers such as Wal-Mart, which is Blitz's largest customer. Blitz's sales to Wal-Mart are made pursuant to a Supplier Agreement, such as the one

attached as **Exhibit E**, which is effective as of March 11, 2010. Each supplier agreement for the period of time at issue in the PCGC Litigation contains the following relevant language:

14. INDEMNIFICATION. Supplier shall protect, defend, hold harmless and indemnify Company, including its officers, directors, employees and agents, from and against any and all lawsuits, claims demands, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs), regardless of the cause or alleged cause thereof, and regardless of whether such matters are groundless, fraudulent or false, arising out of any actual or alleged: (b) Death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged use or latent or patent defect in such Merchandise, including but not limited to (i) any actual or alleged failure to provide adequate warnings, labeling or instructions, (ii) any actual or alleged improper construction or design of said Merchandise, or (iii) any actual or alleged failure of said merchandise to comply with specifications or with any express or implied warranties of Supplier.... Exhibit E at ¶ 14.

Supplier ... shall immediately take such action as may be necessary or appropriate to protect the interests of Company, its officers, directors, employees and agents. Any and all counsel selected or provided by Supplier to represent or defend Company or any of its officers, directors, employees or agents shall accept and acknowledge receipt of Company's Indemnity Counsel Guidelines, and shall conduct such representation or defense strictly in accordance with such Guidelines. If the Company in its sole discretion shall determine that such counsel has not done so, or appears unwilling or unable to do so, Company may replace such counsel with other counsel of Company's own choosing. In such event, any and all fees and expenses of Company's new counsel together with any and all expenses or costs incurred on account of the change in counsel, shall be paid or reimbursed by Supplier as part of its indemnity obligation hereunder.... Exhibit E at ¶ 14.

5. SET-OFF; RESERVATION OF ACCOUNT; CREDIT BALANCE. Company may set off against amounts payable under any Order² all present and future indebtedness of Supplier to Company arising from this or any other transaction whether or not related hereto.... Exhibit E at ¶ 5.

13. To date, in every PCGC case where Wal-Mart has been named as a defendant, it has tendered its defense of the litigation to Blitz, and Blitz has accepted tender as it relates to claims concerning Blitz's PCGCs.

² "Order" is defined as "any written or electronic purchase order issued by the Company [Wal-Mart]."

14. The defendants in the *Funchess* case that have been served (Palmetto Distributors of Orangeburg, LLC, Express Lane, LLC, and Joseph E. Carroll) each filed answers that assert the following affirmative defenses: (1) the injuries suffered by Mr. Funchess were the sole result of Blitz's negligence; and (2) that Blitz is required to indemnify them under the doctrine of equitable indemnity. An answer filed by Palmetto and Express Lane is attached as **Exhibit F**. Accordingly, Blitz may have contractual indemnification obligation towards the Other Defendants or one or more of the Other Defendants may assert a non-contractual basis to demand indemnity from Blitz.

15. I have been overseeing the PCGC Litigation for Blitz since September 2010 and am responsible for maintaining the coordinated defense efforts of Blitz and Wal-Mart in PCGC cases. Blitz and Wal-Mart have executed a joint-defense agreement for their defense of the PCGC Litigation.

15a. Blitz Acquisition, LLC's parent is Blitz Holdings, LLC, which was renamed LAM Holdings, LLC ("**LAM**") on April 12, 2011. LAM has a number of shareholders. Kinderhook Capital Fund II L.P. is the majority shareholder of LAM.

15b. Kinderhook Capital Fund II L.P. is currently a party to two PCGC cases. Kinderhook Industries, LLC and Kinderhook Capital Fund II have also been named in the proposed amended complaint of a third PCGC case. However, the allegations against Kinderhook in each case are limited to piercing the corporate veil. The complaints in these cases do not allege that Kinderhook designed, manufactured or sold PCGC and, therefore, seek only to hold Kinderhook liable to the extent that the Debtors are liable. Kinderhook has denied liability on any basis.

16. I am integral to developing the factual and legal defenses to the PCGC Litigation, the preparation of Blitz's responses to interrogatories relating to the PCGC Litigation; the coordination of document collections; and the identification and preparation of fact witnesses and designees to testify as witnesses under Federal Rule of Civil Procedure 30(b)(6) or state equivalents.

17. As General Counsel for Blitz, I will assist in the management of the legal issues involved in the reorganization of Blitz and the other Debtors. Among other things, I will also be responsible for coordinating the resolution of Blitz's liabilities through the reorganization process, including valuation issues associated with the PCGC Litigation.

18. If the litigation against the Other Defendants was to proceed, other employees of Blitz would also be diverted from critical reorganization efforts. As a practical matter, the Debtors risk material prejudice in their defense of cases against them if causes of action against Kinderhook or any other defendant were to proceed now and without the Debtors' active participation.

19. Wal-Mart currently owes Blitz approximately \$4 million on account of sales made to Wal-Mart pursuant to the Supplier Agreement or its predecessor agreements.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: November 8, 2011


James R. King

EXHIBIT A

Case No.	Plaintiff(s)/Claimant(s)	Defendant(s)	Date of Alleged Injury	Date Filed	Venue & Case No.	Case Status	Trial Date
1	Carmen Lopez and Santiago Rosa, Guardians Ad Litem for Jesus Santiago Rosa, Carmen Lopez and Santiago Rosa in their own right, and Jesus Santiago Rosa, in his own right	MNSP Services Corp. d/b/a Olden Avenue Exxon & Tigermart; PSE&G Services Corp., Rheem Manufacturing Co., Chase Manhattan Bank, John Doe Mortgage Lender Home Inspector, John Doe Installation Co., John Doe Retailer, John Does #1-10, and ABC Corporations #1-10	9/25/2002	10/27/2008	Merger County, NJ State Court, No. MER-L-2500-C18	Settlement Waiting Court Approval	None
2	David Montgomery, Individually and as Guardian ad Litem of Michael Dean Montgomery, a Minor	Blitz U.S.A., Inc. and Blitz Acquisitions, LLC	6/20/2002	5/6/2011	USDC for the Southern District of California, No. 3:11-CV0999	Discovery ongoing, no deadline set	None
3	Landon Beadore, by and through his parents, Paul Beadore and Melissa Weeks, and Melissa Weeks, and Paul Beadores, Individually	Stewart's Shops Corp., A.O. Smith Corp., Central Hudson Gas & Electric Corp., Central Hudson Energy Services, Inc., C.H. Energy Group, Inc., and Blitz U.S.A., Inc.	9/16/2003	8/29/2006	Saratoga County, NY State Court; Complaint Index No. 20062122	Discovery ongoing, no deadline set	None
4	Christopher Bosse	Blitz U.S.A., Inc., Blitz Acquisitions, LLC, Texas Land and Lakes, Inc., and Bob Martin, d/b/a E-Text Underwater Services	3/10/2007	2/20/2009	Gregg County TX State Court; Cause No. 2009-372-A	Discovery closed	12/12/2011
5	Miguel Barrera, Individually and as Personal Representative of the Estate of Sixalfredo Barrera	Wal-Mart Stores, Inc. and Maria Alvarado	8/15/2007	7/28/2009	Lea County, NM State Court; No. Cv-2009-04375	Discovery ongoing, no deadline set	None
6	Chad Funchess	Blitz, U.S.A., Inc., Palmetto Distributors of Orangeburg, LLC, Express Lane, LLC, Joseph E. Carroll, and Foley's, Inc.	8/15/2007	7/31/2009	Court of Common Pleas for Orangeburg County, SC; C/A # 2009CP3801257	Discovery closed	12/5/2011
7	Randall Johnson	Richard Jardine, Robert Jardine, John P. Sullivan, RIO STEERE, LLC, Hurricane Bar & Grill, Ford Motor Company and Blitz U.S.A., Inc.	11/9/2007	11/6/2009	San Diego State Court, CA; Case No. 37-2009-00061581-CU-PO-NC	Discovery ongoing, no deadline set	None
8	Jerry C. Barnett and Daniel R. Fulton	Blitz U.S.A., Inc. and Wal-Mart Stores East, LP	12/30/2007	11/19/2010	USDC for the Southern District of Mississippi; Case # 3:10-cv-00676	Discovery closes April 17, 2012, No. 3:09-cv-0366	10/1/2012
9	Christopher Boling and Holly Coleman Boling	Blitz U.S.A., Inc.	5/23/2008	5/19/2009	USDC for the Western District of Kentucky, No. 1:09-cv-67	Discovery closed	3/5/2012
10	Jasmine Alexis Ballew, a minor, by and through her Guardian ad Litem, Karen Britt Peeler and Jasmine Ballew	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Deborah Jean Ballew	7/17/2008	2/10/2010	Gaston County, NC State Court; 10-CVS-691 Default Entered	Discovery ongoing, no deadline set	None
11	Dennies Thornton, a minor, by and through his next friend and father, David Thornton	Blitz U.S.A., Inc., Kinderhook Industries, LLC and Ronney Orso	1/18/2009	12/29/2009	Circuit Court of Mobile County, AL; CV# 09-902481	Discovery closes Nov. 30, 2011	3/26/2012

12	Jessica Fenn and Jeremiah Fenn, Sr., individually and on behalf of their deceased son and daughter, Jeremiah Fenn, Jr. and Ja'El Fenn	A.O. Smith Corp., Blitz U.S.A., Inc., American Water Heater Co., Rheem Manufacturing Co., Lawson Investments, LLC, Lawson Industries, Inc., and Jason Lawson	7/24/2009	7/19/2011	Superior Court Dougherty County, GA; Civil Action No. 11	Discovery ongoing, no deadline set	None
13	Tillman, Donald	Blitz U.S.A., Inc.	3/6/2009	4/14/2011	Anderson County State Court, SC; Civil Action No 11-CP-04-01200	Discovery ongoing, no deadline set	None
14	Freeland, Kaylee, a minor	Atmos Energy Corporation, Rheem Manufacturing Co., Glenn Hurst, Marsha Hurst, and Blitz U.S.A., Inc.	11/20/2009	5/12/2011	Mercer Circuit State Court, Kentucky; Civil Action No. 10-CI-00437	Discovery ongoing, no deadline set	None
15	Tabitha Alexson as Natural Guardian and Next Friend for Ethan Grooms	Blitz U.S.A., Inc. and Kinderhook Industries, LLC	12/6/2009	4/25/2011	USDC South Carolina; 4:11-cv-01327	Discovery closes March 16, 2012	6/1/2012
16	Dylan J. Trevino, a minor, suing by his Next Friend and Guardian, Diana Trevino, and Diana Trevino, individually	Blitz U.S.A., Inc., LAM 2011 Holdings, LLC, f/k/a Blitz Holdings, LLC; Kinderhook Capital Fund II, L.P.; Blitz Acquisition Holdings, Inc.; Blitz Acquisition LLC; and Blitz RE Holdings, LLC	12/23/2009	12/21/2010	USDC for the Middle District of Tennessee, No. 1:10-cv-00115	Discovery closes Feb. 24, 2012	7/24/2012
17	Robert Jacoby	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., and Discovery Plastics, L.L.C.	2/5/2010	8/13/2010	USDC for the District of Oregon, No. 1:10-cv-03075	Discovery stayed pending mediation.	4/3/2012
18	Karen Gueniot-Kornegay, individually, and on Behalf of All of the Wrongful Death Beneficiaries of Matthew Dylan Kornegay	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., and Discovery Plastics, L.L.C.	3/5/2010	8/5/2010	USDC for the Southern District of Mississippi, No. 3:10-cv-429	Discovery closes June 1, 2012	11/5/2012
19	Robyn Smith, for Devan VanBrunt, a Minor, by his mother and natural guardian	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, and Wal-Mart Stores East, Inc.	4/11/2010	6/14/2011	District Court of Clay County, Minnesota; No. 0:11-cv-01771	Discovery ongoing, no deadline set	None
20	Kenneth and Pam Crouch, individually and as Next Friends of Brooke Crough, a minor	Blitz U.S.A., Inc.	12/18/2009	7/29/2011	USDC for the Eastern District of Texas, No. 5:11-cv-00150	No discovery deadline set; experts due March 16, 2012	None

21	Mary Jo Pierce for B.P., a minor, by his Mother and Natural Guardian	Blitz U.S.A., Inc. and Western Industries, Inc.	8/15/2009	7/29/2011	USDC for the Southern District of Indiana, No. 1:11-cv-01022	Discovery ongoing, no deadline set	None
22	State Farm Lloyds, as subrogee of Eric and Tammy Balch	A.O. Smith Corp., State Industries, Inc., and Blitz U.S.A., Inc.	7/17/2010	2/23/2011	USDC for the Western District of Texas, No. 6:10-cv-00284	Discovery closes Nov. 28, 2011	1/17/2012
23	Richard L Yim, Jr.	Wal-Mart Stores, Inc.	1/5/2010	7/28/2011	USDC Eastern District of Missouri; No. 4:11-cv-01578	Discovery ongoing, no deadline set	None
24	Christopher Droney	Blitz U.S.A., Inc., Kinderhook Industries, LLC, Wal-Mart Stores, Inc., Wal-Mart Stores East LP, and Wal-Mart Stores East, Inc.	12/12/2010	4/19/2011	USDC South Carolina; No. 6:11-cv-01320-TMC	Discovery closes July 30, 2012	4/4/2012
25	Ronald Mills	Blitz U.S.A., Inc.	12/30/2010	4/26/2011	USDC for the District of South Carolina, No. 9:11-cv-02207	Discovery closes April 9, 2012	None
26	Kenneth Ward and Curtis Ward	Blitz U.S.A., Inc., Kinderhook Industries, LLC, Wal-Mart Stores, Inc., Wal-Mart Stores East LP, and Wal-Mart Stores East, Inc.	1/11/2011	3/8/2011	USDC Middle District of Georgia; 1:11-cv-00039	Discovery closes June 4, 2012	10/1/2012
27	Kelly Pye, as the Personal Representative of the Estate of Coty Alan Stahl	Blitz U.S.A. Inc.	12/4/2010	7/14/2011	USDC for the District of South Carolina, No. 2:11-cv-02193	Discovery closes Sept. 28, 2012	6/25/2012
28	Sherri Purvis Individually and as Next Friend and Natural Guardian for James C. Purvis	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East LP, and Wal-Mart Stores East, Inc.	1/15/2011	7/15/2011	USDC Middle District of Georgia; No. 7:11-cv-00111	Discovery ongoing, no deadline set	None

29	Wanda Ferguson as the Personal Representative of the Estate of Jim Ferguson	Blitz U.S.A., Inc.	11/23/2010	7/14/2011	USDC South Carolina (Beaufort); No. 9:11-cv-02207	Discovery closes Oct. 26, 2012	6/25/2012
30	Amanda Burch, individually and as Next Friend and Natural Guardian for Timothy Burch	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East LP, and Wal-Mart Stores East, Inc.	9/27/2010	7/15/2011	USDC Southern District of Georgia; No. 5:11-cv-00084	Discovery closes May 13, 2012	None
31	Percy Wilson as Personal Representative of the Estate of Marshall Wilson	Blitz U.S.A., Inc.	1/22/2011	9/2/2011	USDC Northern District of Florida; No. 3:11-cv-00496	Discovery ongoing, no deadline set	None
32	Wade Guilford	Blitz U.S.A., Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East LP, and Wal-Mart Stores East, Inc.	1/21/2011	9/6/2011	USDC Northern District of Florida; No. 5:11-cv-00336	Discovery ongoing, no deadline set	None
33	Dorsey McClelland and Scott Feldman	Blitz U.S.A., Inc.	2/25/2011	9/6/2011	USDC Northern District of Florida; No. 5:11-cv-00335	Discovery ongoing, no deadline set	None
34	Caroline Joyner as Personal Representative of the Estate of Jacob Austin Joyner	Blitz U.S.A., Inc.	1/15/2011	9/2/2011	USDC Northern District of Florida; No. 5:11-cv-00334	Discovery ongoing, no deadline set	None
35	Cheryl Edgil, individually and as Personal Representative of the Estate of Aliaa Gloryal-Shara	Blitz U.S.A., Inc.	9/19/2010	9/23/2011	Circuit Court of Macomb County, MI; Case No. 11-3990-NO	Discovery ongoing, no deadline set	None
36	Lori Shickel, both individually and as Mother and Next Friend of Jordan Shickel, a Minor	Blitz U.S.A., Inc.; LAM 2011 Holdings, LLC, f/k/a Blitz Holdings, LLC; Kinderhook Capital Fund II, L.P.; Blitz Acquisition Holdings, Inc.; Blitz Acquisition, LLC; Blitz RE Holdings, LLC; F3 Brands, LLC; Wal-Mart Stores, Inc.; Wal-Mart Stores East, Inc.; and Wal-Mart Stores East, L.P.	10/22/2009	10/10/2001	USDC for the Central District of Illinois, 3:11-cv-03380	Not yet established	None

EXHIBIT B

Safety Awareness

Gasoline - FAQs

GASOLINE

Gasoline is dangerous and extremely flammable. Carefully read all cautions on all sides of gasoline containers. Review and adhere to the following safety precautions when using your portable fuel container.

GASOLINE- EXTREMELY FLAMMABLE
VAPORS CAN EXPLODE

- **KEEP OUT OF REACH OR USE BY CHILDREN!**
MANTENGA FUERA DEL ALCANCE DE LOS NIÑOS!!

- HARMFUL OR FATAL IF SWALLOWED

- **NEVER USE GAS TO START A FIRE.** May cause severe injury or death.

NUNCA UTILICE GASOLINE PARA INICIAR UNFUEGO.
Podría causar lesiones graves o la muerte.

- KEEP AWAY FROM HEAT SOURCES

- AVOID prolonged breathing of vapors.

- DO NOT store in your vehicle or living space

- ALWAYS store and use in a well ventilated area.

- Vapors can be ignited by a spark or flame source many feet away.

- KEEP AWAY from flame, pilot light, stoves, heaters, electrical motors, and other sources of ignition.

- DO NOT siphon gasoline by mouth. Gas is harmful or fatal if swallowed. If swallowed, do not induce vomiting. Call your physician immediately.

- ALWAYS place container on the ground when filling to avoid static electricity ignition.

- KEEP container closed when not in use.



For more information on gasoline safety awareness, please visit Shriners Hospitals For Children's new website for

Burn Awareness Week 2008, "Preventing Gasoline Burn Injuries, " at www.burnawarenessweek.org

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**KAREN GUENIOT-KORNEGAY,
Individually, and on Behalf of All of the
Wrongful Death Beneficiaries of
MATTHEW DYLAN KORNEGAY**

PLAINTIFF

VS.

**CIVIL ACTION NO. 3:10-CV-429-TSL-FKB
JURY DEMAND**

**BLITZ U.S.A., INC. and
WAL-MART STORES, INC. and
DISCOVERY PLASTICS, L.L.C.**

DEFENDANTS

FIRST AMENDED COMPLAINT

COMES NOW the Plaintiff, Individually, and on behalf of all of the wrongful death beneficiaries of Matthew Dylan Kornegay, by counsel and through counsel, and for her wrongful death cause of action pursuant to Miss. Code Ann. § 11-7-13, alleges the following:

INTRODUCTION

On or about March 5, 2010, a gas storage container (hereinafter "subject gas can") manufactured by Defendant Blitz U.S.A., Inc. (hereinafter "Blitz"), incorporating component parts manufactured by Defendant Discovery Plastics, L.L.C. (hereinafter "Discovery Plastics"), and sold by Defendant Wal-Mart Stores, Inc. (hereinafter "Wal-Mart") exploded, causing Matthew Dylan Kornegay (hereinafter "Dylan") to suffer severe burns which ultimately caused his death. This action is brought against the Defendants pursuant to the laws of the State of Mississippi to recoup all compensatory and punitive damages to which Plaintiff is entitled as a result of the wrongful death of her son, Matthew Dylan Kornegay.

PARTIES

1. Plaintiff Karen Gueniot-Kornegay is an adult resident citizen of Rankin County, Mississippi. Karen Gueniot-Kornegay brings this suit individually and on behalf of all of the wrongful death beneficiaries of Matthew Dylan Kornegay.

2. Defendant Blitz U.S.A., Inc. is an Oklahoma corporation that maintains its principal place of business in the State of Oklahoma. Blitz has answered and appeared, and no additional service of process is required.

3. Defendant Wal-Mart Stores, Inc. is a Delaware corporation licensed to do business in the State of Mississippi and maintaining its principal place of business in the State of Arkansas. Wal-Mart Stores, Inc. has answered and appeared, and no additional service of process is required.

4. Defendant Discovery Plastics, L.L.C. is a Kansas limited liability company that has engaged in business in the State of Mississippi but maintains its principal place of business in Miami, Oklahoma. Discovery Plastics may be served with process by serving its registered agent, George W. Foster, 3607 28th Ave. NE, Miami, Oklahoma 74354.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). The matter in controversy exceeds the sum of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and diversity of citizenship exists between Plaintiff and Defendants.

6. Venue is proper in the District Court of the Southern District of Mississippi, Jackson Division pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in whole or in part within this District.

FACTS

7. At a time prior to March 5, 2010, Blitz designed and manufactured a portable plastic gas can for sale in the stream of commerce.

8. During the relevant time period, Discovery Plastics manufactured component parts for the can.

9. The subject gas can was sold to Wal-Mart for distribution in Flowood, Rankin County, Mississippi, and thereafter sold by Wal-Mart to Plaintiff Karen Gueniot-Kornegay.

10. On or about March 5, 2010, Matthew Dylan Kornegay was at the McPhail residence at 1606 N. Old Canton Rd., Canton, Madison County, Mississippi. Dylan poured gasoline from the subject gas can in order to rekindle a bonfire which was dying. Gasoline vapors outside the subject gas can ignited and the flame flashed back into the container, causing the subject gas can to explode and Dylan's entire body to catch on fire.

11. As a result of the fire and explosion, Dylan suffered third and fourth degree burns over seventy-six percent of his body. Dylan spent five weeks in the burn unit and had his leg amputated twice during that time. On April 11, 2010, Dylan died from his burn injuries, resulting sepsis, and cardiac arrest.

12. Blitz designed, manufactured, assembled, marketed, distributed and sold the subject gas can that caused Dylan's injuries and death.

13. The subject gas can was not modified or altered after it left Defendants' control, and Dylan was utilizing the subject gas can in an ordinary and reasonable manner in which the subject gas can was intended and reasonably expected to be used.

14. The subject gas can was defective and unsafe for its intended purposes at the time if left Blitz's control in that the design failed to include a flame arrestor device, which is a necessary safety device that would have prevented Dylan's injuries and subsequent death.

15. Blitz knew or should have known of the subject gas can's susceptibility to flashback, which occurs when gasoline vapors ignite and the flames chase the vapor trail back into the can, causing an explosion and/or spew of flames and burning gasoline.

16. Wal-Mart had actual or constructive knowledge of the defective condition of the subject gas can at the time it sold the subject gas can to Karen Gueniot-Kornegay.

17. As a direct and proximate result of Defendants' collective acts and/or omissions in the design, manufacture, assembly, marketing, distribution and sale of the subject gas can, which lacked a flame arrestor, Matthew Dylan Kornegay suffered severe personal injuries, including, but not limited to, severe burns, physical pain and impairment, which caused his death.

CAUSES OF ACTION

COUNT 1 – DESIGN DEFECT

Blitz

18. Plaintiff re-alleges and incorporates in this count each and every preceding allegation as if fully pleaded herein.

19. The subject gas can designed, manufactured, assembled, marketed, distributed, and sold by Blitz was defective and/or unreasonably dangerous when sold.

20. The subject gas can designed, manufactured, assembled, marketed, distributed, and sold by Blitz was the producing cause of Dylan's injuries and death.

21. Blitz is engaged in the business of designing, manufacturing, assembling, marketing, distributing, and selling portable gas cans, including the subject gas can, to consumers within the stream of commerce.

22. Blitz expected the subject gas can, so introduced and passed on in the course of trade, to ultimately reach the residential consumer and/or users without substantial change in the condition in which it was originally sold.

23. The subject gas can did in fact reach Plaintiff and Dylan without substantial change in the condition in which it was originally sold by Blitz and unexpectedly failed under ordinary and foreseeable use.

24. At the time the portable gas can left Blitz's control, and at all times complained of, safer alternative designs were available that would have eliminated the risk of the subject gas can exploding without substantially impairing the usefulness and intended purpose of the product.

25. The subject gas can was unreasonably dangerous and defective in that its design and construction did not incorporate a flame arrestor, a technologically and economically feasible safety device that would have prevented the explosion in the present case.

26. A flame arrestor, sometimes called a flame arresting screen, flash arrestor or spark arrestor, is a small metal device that is placed in a container's openings and allows liquids to flow out of the container but prevents the flashback of flames back into the container. The device consists of either a perforated metal screen or a wire mesh screen.

27. The efficacy of flame arrestors has been known to the gasoline manufacturing industry for decades, and particularly the manufacturers of portable gas cans have been aware of

their existence since before they were first placed in industrial gas cans in the 1950's and began being placed in consumer gas cans in 1978.

28. For more than a quarter century, the utility and efficacy of flame arrestors has been a topic of discussion in the media and national publications and the subject of numerous lawsuits filed by consumers, users, and bystanders who have been burned and/or killed in encounters with portable gas cans that were not equipped with the device.

29. Consequently, Blitz has known, or should have known, for decades prior to this incident that gas cans without flame arrestors were susceptible to flashback (i.e., when gasoline vapors outside the container ignite, the flames can follow the vapor trails back inside the container causing it to explode and/or spew flames and burning gasoline).

30. Without the inclusion of a flame arrestor, the foreseeable risk of injury and/or death associated with the use of the subject gas can far exceeded any utility and/or benefits associated with its design.

31. Nevertheless, despite the wealth of available scientific knowledge, Blitz has made, and continues to make, a conscious decision to endanger the safety of consumers, users, and bystanders by refusing to incorporate a well-known safety device into its portable gas cans, despite the fact that this safety device is economically and technologically feasible.

32. As a direct and proximate result of one or more of Blitz's acts or omissions as described herein and as a direct and proximate result of the subject gas can's defective design, Matthew Dylan Kornegay suffered severe burn injuries, and he died as a direct result of those injuries.

33. Additionally, the Blitz gas can suffered from a defect in manufacturing that caused their caps not to fix securely to the can and therefore, to be lost and gasoline stored in the cans to age.

34. As such, Blitz is liable pursuant to the provisions of Miss. Code Ann. § 11-1-63.

COUNT 2 – FAILURE TO WARN

Blitz

35. Plaintiff re-alleges and incorporates in this count each and every preceding allegation as if fully pleaded herein.

36. Blitz failed to provide adequate warnings that would be reasonably calculated to catch the attention of a reasonably prudent person given that its warnings were not conspicuous.

37. At the time the portable gas can left Blitz's control, consumers and/or foreseeable users, such as Dylan, were not, and still are not, likely to possess knowledge of the extent and magnitude of the risks associated with using Blitz's portable gas cans.

38. Without such knowledge, consumers and/or foreseeable users would not be in a position to avoid the product's inherent dangers through the exercise of ordinary and reasonable care. Conversely, Blitz knew, and was certainly in the best position to know, that its portable gas cans, as designed, posed a tremendous and horrific risk of injury and death to consumers, users, and bystanders.

39. As a direct and proximate result of one or more of Blitz's failures to warn of the subject gas can's defective design, Dylan suffered severe burn injuries, and he subsequently died as a result of those injuries.

40. As such, Blitz is liable pursuant to the provisions of Miss. Code Ann. § 11-1-63.

COUNT 3 – NEGLIGENCE

Blitz

41. Plaintiff re-alleges and incorporates in this count each and every preceding allegation as if fully pleaded herein.

42. Blitz owed consumers and/or foreseeable users, including Plaintiff and Dylan, the duty of reasonable care in its design, manufacture, assembly, marketing, distribution and sale of the subject gas can.

43. Blitz ignored and/or breached that duty by its following negligent acts and/or omissions:

- A. Failed to design and produce a reasonably safe portable gas can;
- B. Designed, manufactured, assembled, marketed, distributed, and sold a portable gas can that was defective;
- C. Placed into the stream of commerce a portable gas can that was defective in design;
- D. Placed into the stream of commerce a portable gas can that was defective in that it failed to contain adequate warnings and instructions;
- E. Placed into the stream of commerce a portable gas can that was unfit for its intended use;
- F. Placed into the stream of commerce a portable gas can likely to cause injury in its ordinary use;
- G. Placed into the stream of commerce a portable gas can that contained manufacturing defects;
- H. Failed to incorporate a flame arrestor in the product design;

- I. Failed to properly test its portable gas can and prototypes thereof with flame arresting material;
- J. Failed to provide adequate instructions and warnings with the product after learning, knowing, or having reason to know, of the defects existing in the product that rendered it unreasonably dangerous for its intended use;
- K. Failed to provide adequate warnings that would be reasonably calculated to catch the attention of a consumer and/or user or that would convey a fair indication of the nature and extent of the dangers involved in using or misusing its product;
- L. Failed to actively seek information regarding incidents in which consumers, users, and bystanders were injured and/or killed when they encountered portable gas cans;
- M. Failed to actively seek information regarding incidents involving explosion and/or internal combustion of portable gas cans;
- N. Failed to provide post-sale warnings after learning, knowing, or having reason to know of the defects existing in the product that rendered it unreasonably dangerous for its intended use;
- O. Failed to take subsequent remedial measures or to recall the product after learning, knowing, or having reason to know of the defects existing in the product that rendered it unreasonably dangerous for its intended use;
- P. Ignored and/or failed to investigate scientific, technological and industry information and studies regarding the efficacy of flame arrestors;
- Q. Ignored and/or failed to investigate other lawsuits and/or similar incidents involving similar claims and incidents in which consumers, users, children, and/or

bystanders were severely and routinely burned and/or killed when encountering such portable gas cans;

R. Failed to report incidences and lawsuits involving other consumers, users, and bystanders who have been burned and/or killed when encountering the portable gas cans to the Consumer Product Safety Commission;

S. Failed to warn that the gas can was not equipped with safety devices;

T. The subject gas can, as sold, posed a risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated by the average reasonable consumer, and the risks associated with this design outweighed its utility;

U. Blitz knew or should have known that consumers would use their gas cans to start and/or maintain a fire, creating an unreasonable and unexpected hazard of vapor ignition and resulting fire, without appropriate design features to prevent ignition and flashback.

44. As an actual and proximate result of Blitz's negligent acts and/or omissions, the subject gas can that caused Dylan's injuries and death was placed into the stream of commerce in a defective and unreasonably dangerous condition.

45. Dylan's injuries and death and the manner in which they occurred were reasonably foreseeable to Blitz, which had actual and/or constructive knowledge from within the industry, national publications, media reports and prior claims and lawsuits, that consumers, users, children and bystanders were being routinely burned and/or killed when encountering their portable gas cans.

46. As a direct and proximate result of one or more of Blitz's negligent acts or omissions as described herein, Dylan suffered severe burn injuries, and subsequently died as a result of those injuries.

COUNT 4 – BREACH OF WARRANTY
Blitz

47. Plaintiff re-alleges and incorporates into this count each and every preceding allegation as if fully pleaded herein.

48. Blitz, by and through the sale of its portable gas cans, expressly and impliedly warranted to the consumer and/or foreseeable users, such as Plaintiff and Dylan, that the container was fit for its ordinary and foreseeable purposes.

49. Plaintiff and Dylan made ordinary use of the container in reliance on said warranties.

50. Contrary to said warranties, the portable gas can was defective and unfit for its ordinary and foreseeable purposes, rendering it unreasonably dangerous.

51. Blitz breached its express and implied warranties by one or more of the following respects, among others:

- A. Failure of the gas can itself and by improper marketing;
- B. Failure to equip the gas can with a flame arrestor and/or other safety devices to make the gas can safe for its foreseeable environment;
- C. Failed to provide adequate warnings about the inherent dangers involved in the use of gasoline and its gas can;
- D. Failed to warn that the gas can was not equipped with a flame arrestor or other safety devices;

- E. The gas can, as sold, posed a risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated by the average reasonable consumer, and the risks associated with its design outweighed its utility;
 - F. Blitz knew or should have known of feasible alternative designs that would have significantly reduced and/or eliminated the risk of flammable vapor ignition and failed to employ said design alternatives to make it safe for its foreseeable environment;
 - G. Blitz knew or should have known that consumers would use gas cans to start and/or maintain fires, creating an unreasonable and unexpected hazard of vapor ignition and resulting fire, without appropriate design features to prevent flashback;
 - H. Failed to assure that the product design included a flame arrestor;
 - I. Failed to protect foreseeable users of the gas can from the dangers present in the use of such container, which dangers Blitz knew or should have known existed;
 - J. Failure to recall and/or repair the product;
 - K. Placed on the market a gas can which was unfit for its intended use;
 - L. Placed on the market a gas can which was not safe for the ordinary purpose for which it was sold.
52. As an actual and proximate result of Blitz's breach of said warranties, the subject gas can was placed into the stream of commerce in a defective and unreasonably dangerous condition.
53. Dylan's injuries and resulting death and the manner in which they occurred were reasonably foreseeable to Blitz, which had actual and/or constructive knowledge from within the

industry, national publications, media reports, and prior claims and lawsuits, that consumers, users, children and bystanders were being routinely burned and/or killed when encountering their portable gas cans.

54. As a direct and proximate result of said breach of warranty, Dylan suffered severe burn injuries, and subsequently died as a result of those injuries.

55. As such, Blitz is liable pursuant to the provisions of Miss. Code Ann. §§ 11-1-63, 75-2-314, and 75-2-315.

COUNT 1 – DESIGN DEFECT
Wal-Mart

56. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

57. The gas can was defectively designed and unreasonably dangerous for its anticipated, intended and foreseeable use in the following ways:

- A. Wal-Mart sold a gas can without a flame arrestor and/or other safety devices;
- B. Wal-Mart participated in and impacted the design of Blitz's gas cans and knew that it had the ability to impact the design of Blitz's gas cans;
- C. Wal-Mart failed to provide adequate warnings about the inherent dangers involved in the use of gas containers they sold;
- D. Wal-Mart sold Blitz gas cans that contained manufacturing defects;
- E. Wal-Mart knew or should have known at the time it supplied the subject gas can that the can, as sold, was defectively designed because it posed a risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated by the average reasonable consumer/purchaser, and the risks associated with this design outweighed its utility;

F. Wal-Mart knew or should have known of other available gas cans that were designed to significantly reduce and/or eliminate the risk of flammable vapor ignition, and failed to offer such cans for sale and instead sold the defective gas container to Plaintiff and knew of incidents where gasoline cans had exploded, causing burn injuries;

G. Wal-Mart knew or should have known that consumers would use gas cans to start and/or maintain fires, creating an unreasonable and unexpected hazard of vapor ignition and resulting fire, without appropriate design features to prevent flashback.

58. Wal-Mart had actual or constructive knowledge of the defects alleged herein, had actually joked about the dangers at management and supplier meetings, and in putting the gas container into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Plaintiff, Dylan, and other foreseeable plaintiffs, and therefore an award of punitive damages is appropriate.

59. As a direct and proximate result of one or more of Wal-Mart's acts or omissions as described herein and as a direct and proximate result of the gas can's defective design, Dylan suffered severe burn injuries and subsequently died as a result of those injuries.

60. As such, Wal-Mart is liable pursuant to the provisions of Miss. Code Ann. § 11-1-

COUNT 2 – FAILURE TO WARN
Wal-Mart

61. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

62. Wal-Mart failed to provide adequate warnings of the dangers associated with the use of Blitz gas cans that would be reasonably calculated to catch the attention of a reasonably prudent person.

63. At the time the portable gas cans left Wal-Mart's control, consumers and/or foreseeable users, such as Dylan, were not, and still are not, likely to possess knowledge of the extent and magnitude of the risks associated with using Blitz's portable gas cans.

64. Without such knowledge, consumers and/or foreseeable users would not be in a position to avoid the product's inherent dangers through the exercise of ordinary and reasonable care. Conversely, Wal-Mart knew that its portable gas cans, as designed, posed a tremendous and horrific risk of injury and death to consumers, users, and bystanders.

65. Wal-Mart had actual or constructive knowledge of the inadequate warnings referenced *supra* at the time it supplied the product, had actually joked about the dangers at management and supplier meetings, and in putting the gas container into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Plaintiff, Dylan, and other foreseeable plaintiffs, and therefore an award of punitive damages is appropriate.

66. As a direct and proximate result of one or more of Wal-Mart's actions or omissions as described herein and as a direct and proximate result of the gas can's inadequate warnings, Dylan suffered severe burn injuries and subsequently died as a result of those injuries.

67. As such, Wal-Mart is liable pursuant to the provisions of Miss. Code Ann. § 11-1-63(h).

COUNT 3 – NEGLIGENCE

Wal-Mart

68. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

69. Wal-Mart committed one or more of the following negligent acts and/or omissions in the design, construction, manufacture, engineering, marketing and sale of the subject gas can:

- A. Wal-Mart sold a gas can without a flame arrestor and/or other safety devices;
- B. Wal-Mart participated in and impacted the design of Blitz's gas cans;
- C. Wal-Mart failed to provide adequate warnings about the inherent dangers involved in the use of gas containers they sold;
- D. Wal-Mart sold Blitz gas cans that contained manufacturing defects;
- E. Wal-Mart knew or should have known at the time it supplied the gas can that the can, as sold, was defectively designed because it posed a risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated by the average reasonable consumer/purchaser, and the risks associated with this design outweighed its utility;
- F. Wal-Mart knew or should have known of other available gas cans that were designed to significantly reduce and/or eliminate the risk of flammable vapor ignition, and failed to offer such cans for sale and instead sold the defective subject gas can to Plaintiff;
- G. Wal-Mart knew or should have known that consumers would use gas cans to start and/or maintain fires, creating an unreasonable and unexpected hazard of vapor

ignition and resulting fire, without appropriate design features to prevent flashback.

70. As a direct and proximate result of Wal-Mart's negligence, the subject gas can was sold in a defective condition, unreasonably dangerous when used as intended and when put to reasonably anticipated and/or foreseeable use.

71. Wal-Mart had actual knowledge of the defects alleged herein, had joked about them in management and supplier meetings, and in subsequently putting the subject gas can into the stream of commerce, acted with complete indifference to and conscious disregard for the safety of Plaintiff and Dylan, and therefore an award of punitive damages is appropriate.

72. Dylan's injuries and subsequent death, and the manner in which they occurred, were reasonably foreseeable to Wal-Mart, which knew or should have known that people were being severely burned when encountering gas containers.

73. As a direct and proximate result of one or more of Wal-Mart's acts or omissions as described herein, Dylan suffered severe burn injuries and subsequently died as a result of those injuries.

COUNT 4 – BREACH OF WARRANTY
Wal-Mart

74. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

75. Wal-Mart is a merchant of gas cans.

76. In selling and placing the gas can into the stream of commerce, Wal-Mart impliedly warranted that the gas can was merchantable and fit for the ordinary, anticipated and foreseeable purposes for which it was intended to be used.

77. Wal-Mart breached said implied warranty in one or more of the following respects, among others:

- A. Wal-Mart sold a gas can without a flame arrestor and/or other safety devices;
- B. Wal-Mart participated in and had impacted the design of Blitz's gas cans;
- C. Wal-Mart failed to provide adequate warnings about the inherent dangers involved in the use of gas containers they sold;
- D. Wal-Mart sold Blitz gas cans that contained manufacturing defects;
- E. Wal-Mart knew or should have known at the time it supplied the gas can that the can, as sold, was defectively designed because it posed a risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated by the average reasonable consumer/purchaser, and the risks associated with this design outweighed its utility;
- F. Wal-Mart knew or should have known of other available gas cans that were designed to significantly reduce and/or eliminate the risk of flammable vapor ignition, and failed to offer such cans for sale and instead sold the defective subject gas can to Plaintiff;
- G. Wal-Mart knew or should have known that consumers use gas cans to start and/or maintain fires, creating an unreasonable and unexpected hazard of vapor ignition and resulting fire, without appropriate design features to prevent flashback.

78. As a direct and proximate result of Wal-Mart's breach of warranty, Dylan suffered severe burn injuries and subsequently died as a result of those injuries.

79. As such, Wal-Mart is liable pursuant to the provisions of Miss. Code Ann. §§ 11-1-63, 75-2-314, and 75-2-315.

COUNT 1 - MANUFACTURING DEFECT
Discovery Plastics

80. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

81. At all relevant times, Discovery Plastics was engaged in the business of manufacturing component parts of portable gas cans, including the Blitz gas can in the present case, which were to be sold to consumers within the stream of commerce.

82. Discovery Plastics expected the component parts it manufactured to ultimately reach the residential consumer and/or users, such as Dylan, without substantial change in the condition in which they were originally manufactured. The component parts manufactured by Discovery Plastics, as incorporated into the gas can by Blitz, did in fact reach Dylan without a substantial change in the condition in which they were originally manufactured by Discovery Plastics and unexpectedly failed under ordinary and foreseeable use due to defective manufacturing.

83. At the time the component parts left Discovery Plastics' control, and at all times complained of, the yellow spout cap manufactured by Discovery Plastics for the Blitz self-venting can, which was incorporated into the gas can in the present case, suffered from manufacturing defects which caused and/or contributed to cause the cap to be able to be easily removed, and was made with defective processes and/or molds.

84. Discovery Plastics utilized defective manufacturing processes and/or molds in manufacturing the cap and failed to implement and/or monitor its processes to ensure it was producing a quality product of uniform size.

85. The component parts manufactured by Discovery Plastics for the Blitz self-venting can were defective because they deviated in a material way from the manufacturer's

specifications or from otherwise identical units manufactured to the same manufacturing specifications.

86. As a direct and proximate result of one or more of Discovery Plastics' acts or omissions as described herein and as a direct and proximate result of the gas can's defective design, Discovery Plastics is liable to Plaintiff pursuant to the provisions of Miss. Code Ann. § 11-1-63.

COUNT 2 - NEGLIGENCE
Discovery Plastics

87. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

88. Discovery Plastics owed consumers and/or foreseeable users, including Dylan, the duty of reasonable care in its manufacture and production of its component parts for gas cans.

89. Discovery Plastics ignored and/or breached that duty by its following negligent acts and/or omissions:

- A. Manufactured defective component parts for Blitz gas cans, including the yellow cap that fit on the end of the self venting spout of Blitz's gas cans;
- B. Placed into the stream of commerce component parts that contained manufacturing defects;
- C. Placed into the stream of commerce component parts that were unfit for their intended use;
- D. Placed into the stream of commerce component parts likely to cause injury in their ordinary use;
- E. Failed to adequately test its caps for uniformity and/or compliance with quality programs;

F. Discovery Plastics knew or should have known that there were manufacturing defects in its component parts that caused the cap to fall off and/or be lost or allowed users to fail to appropriately secure it, resulting in an open or improperly sealed can which increased the likelihood of an explosion.

90. As a direct and proximate result of one or more of Discovery Plastics' acts or omissions as described herein, Dylan suffered severe burn injuries and subsequently died as a result of those injuries.

CAUSATION AND DAMAGES

91. Plaintiff re-alleges and incorporates in this section each and every preceding allegation as if fully pleaded herein.

92. Defendants caused the wrongful death of Matthew Dylan Kornegay as a result of the negligence and other tortious conduct set forth herein. Plaintiff demands money damages consistent with Mississippi law for the harm inflicted by Defendants, including, but not limited to the following:

- A. Medical expenses;
- B. Funeral expenses;
- C. Past and future emotional distress;
- D. Past pain and suffering; and
- E. Past and future losses of wages, entitlements, support and other recoverable economic losses.

93. Defendants have exhibited such willful disregard and/or absence of due care and/or recklessness and/or gross negligence such that punitive damages are appropriate in this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Karen Gueniot-Kornegay prays that she be awarded all compensatory and punitive damages due and owed, including attorneys' fees and costs associated with the prosecution of this action, as allowed by Mississippi law, and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted, this the 1st day of July, 2011.

/s/ Casey L. Lott

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Langston & Lott, P.A.
100 South Main Street
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Booneville, MS 38229
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2011, I electronically filed the foregoing *First Amended Complaint* with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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This the 1st day of July, 2011.

/s/ Casey L. Lott
CASEY L. LOTT

EXHIBIT D

TEXARKANA DIVISION

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## JURY TRIAL DEMANDED

## 1

### **PARTIES**

1. Plaintiffs are individuals and residents of the State of Texas, Red River County.
2. Defendant Blitz U.S.A., Inc. is an Oklahoma corporation that maintains its principle place of business in the State of Oklahoma. Blitz may be served with process by serving its registered agent, Rocky Flick, Blitz U.S.A., Inc., 404 26th Ave. NW, Miami, Oklahoma 74354-2206.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). The matter in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs, and diversity of citizenship exists between Plaintiffs and Defendant.
4. Venue is proper in the District Court of the United States District Court for the Eastern District of Texas, Texarkana Division, pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claim occurred in whole or in part within this District.

### **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

5. Blitz is in the business of designing, marketing, manufacturing and selling portable plastic gasoline cans.
6. Blitz designed, manufactured, marketed and sold a model of gas can known as the Blitz Self Vent Can (hereinafter "can").
7. The can was purchased prior to the incident which occurred on or about December 18, 2009. The can contained gasoline at the time of the incident.
8. On or about December 18, 2009, Brooke Crouch was at a gathering of high school friends where she was sitting around a camp fire.

9. One of the boys at the gathering picked up the Blitz gas can and used it to try to rekindle the dying camp fire.

10. Gasoline vapors were ignited outside of the can and flashed back inside of the can causing the can to suffer an internal explosion which caused flaming gasoline to erupt out of the can and across the fire where Brooke sat talking to friends.

11. Brooke was wearing her cheerleading uniform at the time, and the flaming gasoline shot onto her hands and legs and up under her skirt causing her to suffer severe third degree burn injuries.

12. After multiple attempts, friends were finally able to extinguish Brooke's burning body.

13. Brooke suffered third degree burns. While waiting for help to arrive, she was conscious and alert and experiencing excruciating pain. Brooke was taken to a burn unit, where she suffered through surgical procedures, skin grafting and almost daily debridement procedures. Even after release from the hospital, Brooke's skin did not heal completely and required the use of staples and wraps to hold it in place. She also required extensive physical therapy and is now permanently scarred and disfigured both physically and psychologically.

#### **CLAIMS FOR RELIEF**

#### **COUNT I – STRICT LIABILITY**

14. Plaintiffs re-allege and incorporate in this section each and every preceding allegation as if fully pleaded herein.

15. Blitz is engaged in the business of designing, manufacturing, assembling, marketing, distributing, and selling the can to consumers within the stream of commerce. Blitz designed, manufactured, assembled, marketed, distributed and sold the can that caused Brooke's injuries.

16. Blitz expected the can to ultimately reach the residential consumer and/or users without substantial change in the condition in which it was originally sold. The can did in fact reach the user(s) without a substantial change in the condition in which it was originally sold by Blitz and unexpectedly failed under ordinary and foreseeable use. The can was not modified or altered after it left Defendant's control, and the can was being utilized in a foreseeable manner which was both known to Blitz and reasonably expected by them.

17. At the time the can left Defendant's control, and at all times complained of herein, safer alternative designs, incorporated into other Blitz gas cans, were feasible to eliminate the risk of the subject gas can exploding without substantially impairing the usefulness and intended purpose of the product.

18. The can was defective and unsafe for its intended purposes at the time it left Defendant's control, in that the design failed to include a flame arrestor device, which is a necessary safety device that would have prevented Brooke's catastrophic burn injuries and the catastrophic burn injuries of countless others.

19. Blitz failed to act as a reasonable manufacturer by failing to implement a feasible alternative design to prevent foreseeable injuries and deaths from the lack of a flame arrestor on its gas cans.

20. Blitz failed to act as a reasonable manufacturer by failing to produce a gas can closure that would prevent flammable gas fumes and liquid from escaping the can and allowing the gasoline to age into the explosive limit.

21. Blitz knew or should have known of the can's susceptibility to flashback and explosion, which occurs when gasoline vapors outside the can ignite and the flames follow the vapor trail back into the can, causing an internal explosion within the can and a release of burning gasoline liquid and vapors and/or a flame thrower effect where burning vapors and liquid explode out of the can. Both phenomena cause victims to be immolated.

22. The Blitz gas can was unreasonably dangerous and defective in its design and manufacture because it did not incorporate a flame arrestor, a technologically and economically feasible safety device that would have prevented the explosion in the present case and/or other existing technology to prevent explosion. Blitz failed to warn users of the defective condition of the can and that cans such as the one purchased may explode if there is a flashback that follows the gasoline vapors back to the can.

23. A flame arrestor, sometimes called a flame arresting screen, flash arrestor or spark arrestor, is a small metal device that is placed in a container's openings and allows liquids to flow out of the container but prevents the a spark or flame from entering the container and igniting and internal explosion of the can. The device is essentially a filter screen made out of either a perforated metal disk or a wire mesh screen. Flame arrestors have been in existence for over two centuries and have a variety of commercial applications ranging from water heaters to rum bottles to other gasoline cans.

24. The efficacy of flame arrestors has been known to the gasoline manufacturing industry for decades. Manufacturers of portable gas cans have been aware of their existence and have included them in their design since before the 1920's. Blitz even had a flame arrestor on their metal cans but chose to leave off the device when it began manufacturing its cheap plastic line of cans. Blitz even investigated flame arresting technology but never got around to putting it into their cans, despite multiple ongoing lawsuits involving severely burned individuals.

25. Since at least 1994, the utility and efficacy of flame arrestors has been a topic of discussion in the media and national publications and the subject of numerous lawsuits filed to consumers, users, and bystanders who have been burned and/or killed in encounters with portable gas cans that were not equipped with the device.

26. Consequently, Blitz has known, or should have known, for decades prior to this incident that gas cans without flame arrestors were susceptible to flashback (i.e., when gasoline vapors outside the container ignite, the flames can follow the vapor trails back inside the container causing it to explode and/or spew flames and burning gasoline).

27. Without the inclusion of a flame arrestor, the foreseeable risk of injury and/or death associated with the use of the subject gas can far exceeded any utility and/or benefits associated with its design.

28. Nevertheless, despite the wealth of available scientific knowledge, Blitz has made, and continues to make, a conscious, willful, wanton and reckless decision to endanger the safety of consumers, users, and bystanders by refusing to incorporate a well-known safety devices and/or container designs into its portable gas cans, despite the fact that these safety devices and/or designs are economically and technologically feasible.



29. Additionally, Blitz's can was manufactured in a manner that violated basic quality and testing standards making the container more likely to rupture.

30. The can designed, manufactured, assembled, marketed, distributed, and sold by Blitz was defective and/or unreasonably dangerous when sold.

31. The can designed, manufactured, assembled, marketed, distributed and sold by Blitz was the direct and proximate cause of Brooke's injuries and damages.

32. As a direct and proximate result of Blitz's acts and/or omissions in the design, manufacture, assembly, marketing, distribution and sale of the can as alleged, Brooke suffered severe personal injuries, including, but not limited to, severe burns, severe physical pain and suffering, permanent scarring, psychological impairment, vocational impairment and emotional distress. Brooke will require multiple additional future surgeries and related rehabilitation and medication as a result of her injuries.

33. As a direct and proximate result of Blitz's acts and/or omissions in the design, manufacture, assembly, marketing, distribution and sale of the can as alleged, Brooke has suffered reasonable and necessary medical expenses in the past and will incur reasonable and necessary medical expenses in the future in an amount which is currently unknown but which will be pleaded when ascertained.

34. As a direct and proximate result of Blitz's acts and/or omissions in the design, manufacture, assembly, marketing, distribution and sale of the can as alleged, Brooke has suffered lost income and loss of earning capacity in amounts which are currently unknown but which will be pleaded when ascertained.

35. As a direct and proximate result of Blitz's acts and/or omissions in the design, manufacture, assembly, marketing, distribution and sale of the can as alleged, Blitz is liable to Plaintiff pursuant to the Texas Product Liability Act.

36. In order to avoid liability in civil cases for damages such as this instant case, Blitz has destroyed and/or otherwise spoliated evidence, committed perjury and violated discovery rules and orders in attempt to prevent plaintiffs' allegations in this and other similar cases.

37. Based upon the entirety of Blitz's actions as alleged in this paragraph and those preceding it, Plaintiffs reserve the right to amend the Complaint to request an award of punitive damages once discovery is completed.

#### **COUNT II – NEGLIGENCE**

38. Plaintiffs re-allege and incorporate in this section each and every preceding allegation as if fully pleaded herein.

39. Blitz owed consumers and/or foreseeable users, including Brooke, the duty of reasonable care in its design, manufacture, assembly, marketing, distribution and sale of the subject gas can.

40. Blitz ignored and/or breached that duty by its following negligent acts and/or omissions:

- A. Failed to design and produce a reasonably safe can;
- B. Designed, manufactured, assembled, marketed, distributed, and sold a can that was defective;
- C. Placed into the stream of commerce a can that was defective in design and manufacture;

- D. Placed into the stream of commerce a can that was defective in that it failed to contain adequate warnings and instructions;
- E. Placed into the stream of commerce a can that was unfit for its intended and anticipated use;
- F. Placed into the stream of commerce a can that was likely to and did cause injury during its ordinary and/or foreseeable use;
- G. Placed into the stream of commerce a can that contained manufacturing defects that increased the risk of explosion;
- H. Failed to appropriately investigate and incorporate a flame arrestor in the product design;
- I. Failed to properly test its can and prototypes thereof regarding the risk of internal explosion and/or the use of flame arresting material;
- J. Failed to actively seek information regarding incidents involving explosion and/or internal combustion of gas cans and/or gasoline injuries;
- K. Failed to take subsequent remedial measures such as post-sale warnings and/or to recall the can after learning, knowing, or having reason to know of the defects existing in the can that rendered it unreasonably dangerous for its intended use;
- L. Failed to report incidences and lawsuits involving other consumers, users, and bystanders who have been burned and/or killed when encountering the can to the Consumer Product Safety Commission;
- M. Sold the can when it knew it posed an unreasonable risk of flammable vapor ignition, flashback and explosion to users beyond that understood or contemplated

by the average reasonable consumer, and the risks associated with this design outweighed its utility;

N. Failed to investigate consumer use of its cans with regards to starting fires and/or exposure to ignition sources and failed to incorporate the knowledge they did have into the design of their can through a standard FEMA design analysis.

O. On at least two occasions, Blitz halted projects to equip its can with flame arrestors for financial and strategic legal reasons as opposed to safety considerations;

P. Blitz spoliated evidence and failed to issue a litigation hold during ongoing litigation which would tend to prove Plaintiff's allegations that Blitz is liable to Plaintiff.

41. As a direct and proximate result of Blitz's negligent acts and/or omissions, the can that caused Brooke's injuries was placed into the stream of commerce, in a defective and unreasonably dangerous condition, acting with complete indifference to, and in willful, conscious disregard for the safety of Brooke, and other foreseeable plaintiffs. After discovery is conducted, Plaintiffs reserve the right to seek leave of the Court to amend their Complaint to seek punitive damages against Blitz for gross negligence.

42. Brooke's injuries, and the manner in which they occurred, were reasonably foreseeable to Blitz, which had actual and/or constructive knowledge from within the industry, national publications, media reports and prior claims and lawsuits, that consumers, users, children and bystanders were being routinely burned and/or killed when encountering their portable gas cans.

### **EXEMPLARY DAMAGES**

43. Plaintiffs re-allege and incorporate in this section each and every preceding allegation as if fully pleaded herein.

44. Defendant's acts and/or omissions pertaining to the its portable gas cans, when viewed objectively from Defendant's standpoint at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others from gas cans that are highly susceptible to explosions.

45. Moreover, Defendant Blitz had actual, subjective awareness of such risk but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of others and even joked about such injuries.

46. Defendant's acts and/or omissions constituted a flagrant disregard for the safety of consumers, users, and bystanders that encounter its portable gas cans, including Plaintiffs. Thus, Plaintiffs are entitled to exemplary damages for injuries resulting from gross negligence in an amount to be determined by a jury.

### **PRAYER**

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- A. For damages in excess of \$75,000 sustained by Plaintiffs, including, but not limited to, those damages set forth above in an amount to be determined by the trier of fact;
- B. For exemplary damages in an amount to be determined by the trier of fact;
- C. For pre-judgment and post-judgment interest;
- D. For all costs of Court; and
- E. For any such further relief that Plaintiffs may be justly entitled.

Respectfully submitted,

/s/ MF

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(816) 421-0114 (Telephone)

(816) 421-0112 (Facsimile)

**ATTORNEYS FOR PLAINTIFFS**

**PLAINTIFFS RESPECTFULLY REQUEST A TRIAL BY JURY ON ALL  
COUNTS AND ISSUES**

## **EXHIBIT E**

## SUPPLIER AGREEMENT

Supplier Number: 210427-10-2

Effective Date: 03/11/2010

This Supplier Agreement ("Agreement") between the party listed below ("Supplier") and Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Wal-Mart Stores East, Inc., Wal-Mart Stores Texas, LP, Sam's West, Inc., Sam's East, Inc. and affiliates (hereinafter referred to collectively as "Company") sets forth Supplier's qualifications and the general terms of the business relationship between Company and Supplier. The parties agree that all sales and deliveries of all Merchandise (as defined below) by Supplier to Company and all Orders (as defined below) by Company will be covered by and subject to the terms of this Agreement, the Standards for Suppliers (which is attached and incorporated by reference) and any Order signed or initialed (electronically or otherwise) by an Authorized Buyer (as defined below) for Company. This Agreement becomes effective on the date shown above and remains effective for the term set forth herein. The execution and submission of this Agreement does not impose upon Company any obligation to purchase Merchandise.

### General Supplier Information

Supplier's Business Classification: (Please disregard this section if Supplier is not a female or minority-owned business)

Woman-Owned? ☐ Minority Owned? ☐  
\_BLACK \_ASIAN-PACIFIC AMERICAN \_INDIAN \_ESKIMO \_HISPANIC \_NATIVE AMERICAN \_ALEUT \_NATIVE HAWAIIAN

If Supplier falls within any of the above classes, and has been certified as minority-owned by a government agency or purchasing council, Supplier is qualified for the first step in the Wal-Mart Minority/Female Owned Business Development Program (the "Supplier Development Program"). Supplier agrees to provide to Company a copy of its certification as a prerequisite to qualification in the Supplier Development Program. For further information, please contact the Wal-Mart Supplier Development Office at 1-800-604-4555.

Enter the Federal Taxpayer Identification Number (TIN) of the Supplier Named Below.

If a TIN has not been issued, enter the Employer's Social Security Number.

TIN: \*\*\*\*\*8104

Type of Payee (Check Only One): ☐ Individual/Sole Proprietorship ☒ Corporation ☐ Partnership ☐ Other

Supplier Information: BLITZ USA  
Address: 404 26TH AVENUE NW  
Address 2:  
City/State/Zip: MIAMI, OK 74354

President: ROCKY FLICK Phone: 8003313795  
Acct. Executive or V.P. Sales: BRIAN BRASSFIELD Phone: 8003313795  
Acct. Contact: SANDY VONMOSS Phone: 8003313795

### ADDRESS TO MAIL PAYMENT:

Supplier Name: BLITZ USA  
Address: PO BOX 678006  
Address 2:  
City/State/Zip: DALLAS, TX 752678006

Factor Name:

Supplier Also Doing Business As: (Attach a list to Agreement if space below is insufficient):

Supplier Number: 210427

### ADDRESS TO SEND ORDERS:

Supplier Name: BLITZ USA  
Attention: SANDY VONMOSS  
Address: 404 26TH AVE NW  
City/State/Zip: MIAMI, OK 743540000

Street Address for use by delivery services other than the U.S. Mail, if not already shown in the Purchase Order address above:

Room: 0

Expedite Orders: Phone: Extension #: 193  
8003313795

### ADDRESS TO MAIL CLAIM DOCUMENTATION:

Attention: SANDY VONMOSS  
Address: 404 26TH AVE NW  
City/State/Zip: MIAMI, OK 743540000  
Accounting Phone Number: Extension #: 193  
8003313795

Toll Free Number: Fax Number:

Has Supplier or any related entity previously conducted business with Company? Yes ☒ No ☐ If so, under what name(s)?  
BLITZ USA

### ADDRESS TO SEND PRICING TICKETS:

Supplier Name:  
Attention:  
Address:  
City/State/Zip:

## STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** As used in this Agreement or any Company issued Order, the following capitalized words shall have the following meanings:

- (a) "Account" shall mean any right to receive payments arising under this Agreement.
- (b) "Anticipation" shall mean the intentional or unintentional payment of obligations prior to the due date which results in a monetary adjustment in amounts payable to Supplier.
- (c) "Authorized Buyer" shall mean any General Merchandise Manager, Divisional Merchandise Manager, Buyer 1, 2 or 3 and replenishment manager assigned to the Wal-Mart category/department corresponding to the purchased Merchandise.
- (d) "Merchandise" shall mean all products, goods, materials, equipment, articles, and tangible items supplied by Supplier to Company and all packaging, instructions, warnings, warranties, advertising and other services included therewith.
- (e) "Electronic Data Interchange" ("EDI") shall mean the moving of information regarding specific business processes (invoicing, ordering, reporting, etc.) electronically between two or more businesses. The information is transmitted electronically structured



according to standards mandated by Company.

(f) "End of Month Dating" shall mean payment terms beginning at the first of the following month rather than from the receipt of merchandise, if the merchandise is received on or after the 24th of the month.

(g) "High Risk Supplier" shall mean a Supplier identified as such by Company in view of the nature of the Supplier's products, the severity of claims made against Supplier's products, the frequency of claims made, past litigation involving the Supplier's products and other factors deemed relevant by Company.

(h) "Order" shall mean any written or electronic purchase order issued by Company.

(i) "Recall" shall mean any removal of Merchandise from the stream of commerce initiated by Supplier, a government entity or Company.

(j) "Standards" shall mean the Wal-Mart Stores, Inc. Standards for Suppliers, attached hereto.

(k) "Vendor Master" shall mean the accounting department of Company responsible for control and processing of new supplier agreements and updates to existing agreements.

**2. ORDERS; CANCELLATION.** Supplier may ship only after receipt of an Order. Acceptance of an Order may be made only by shipment of the Merchandise in accordance herewith. Acceptance is expressly limited to all of the terms and conditions of such Order, including, all shipping, routing and billing instructions and all attachments and supplemental instructions delivered therewith. Shipments made contrary to Company's routing instructions will be deemed F.O.B. Destination (either store, club or warehouse). Supplier's invoice, confirmation memorandum or other writing may not vary the terms of any Order. Supplier's failure to comply with one or more terms of an Order shall constitute an event of default and shall be grounds for the exercise by Company of any of the remedies provided for in this Agreement or by applicable law. Projections, past purchasing history and representations about quantities to be purchased are not binding, and Company shall not be liable for any act or expenditure (including but not limited to expenditures for equipment, materials, packaging or other capital expenditures) by Supplier in reliance on them. Company may cancel all or any part of an Order at any time prior to shipment.

**3. SUPPLIER FINANCIAL INFORMATION; SALES TO COMPANY.** Supplier shall submit to Company with this Agreement one of the following: (1) a complete set of audited current financial statements, (2) a current Dun & Bradstreet financial report, or (3) if publicly held, Supplier's most recent annual report to shareholders and management proxy information. If Company's purchases from Supplier are anticipated by Supplier to constitute twenty percent (20%) or more of Supplier's gross annual sales on a calendar year basis, Supplier agrees to notify Company of this fact, in writing, within thirty (30) days of Supplier becoming aware of such possibility.

**4. PAYMENT TERMS; CASH DISCOUNT; ANTICIPATION.** Supplier shall transmit invoices on the same day Merchandise is shipped, but payment terms shall date from Company's receipt of the Merchandise. If Supplier selects End of Month Dating on Appendix 1 hereto, Merchandise received after the 24th of any month shall be payable as if received on the first day of the following month. Any cash discount selected by Supplier on Appendix 1 will be calculated on the gross amount of Supplier's invoice. Anticipation may be taken upon the mutual consent of the parties.

**5. SET-OFF; RESERVATION OF ACCOUNT; CREDIT BALANCE.** Company may set off against amounts payable under any Order all present and future indebtedness of Supplier to Company arising from this or any other transaction whether or not related hereto. If Company determines that Supplier's performance under an Order and/or this Agreement is likely to be impaired, Company may establish a reserve on Supplier's Account to satisfy Supplier's actual or anticipated obligations to Company arising from any such Order or this Agreement, by withholding payment of Supplier's invoices. Supplier agrees that any credit balance will be paid in cash to Company upon written request.

**IMPORTANT NOTICE: ALL PAYMENTS OF MONIES OWED PURSUANT TO THIS SUPPLIER AGREEMENT AND PURCHASE ORDERS MUST BE MAILED TO THE FOLLOWING ADDRESS:**

**WAL-MART STORES, INC./SAM'S CLUB, C/O CORPORATE ACCOUNTING, P.O. BOX 500787, ST. LOUIS, MISSOURI 63150-0787.**

**Note: Any payments on your Wal-Mart or SAM'S CLUB Credit Card should be mailed to the billing address indicated on your credit card statement, not the address above.**

**6. NOTICE REGARDING ASSIGNMENT OF ACCOUNTS; ACCOUNT DISPUTES.** Supplier shall provide Company written notice of an assignment, factoring, or other transfer of its Account at least 30 days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of the assignee/transferee, the date the assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by Vendor Master. Supplier may have only one assignment, factoring or transfer of its Account effective at any time. The assignment of any Account hereunder shall not affect Company's rights set forth in Section 5 of this Agreement. Supplier shall defend, indemnify and hold Company harmless from any and all lawsuits, claims, demands, actions, damages (including reasonable attorney fees, court costs, obligations, liabilities or liens) arising from or related to the assignment, transfer or factoring of its Account. Supplier releases and waives any right, claim or action against Company for amounts due and owing under this Agreement where Supplier has not complied with the notice requirements of this provision. Notices required pursuant to this Section shall be mailed to: Wal-Mart Stores, Inc., Attn: Vendor Master, 1108 S.E. 10th St. Bentonville, AR 72716-0660.

Notwithstanding the foregoing, any dispute or any other circumstance, Company reserves the right to remit payment to Supplier.

**7. TAXES.** The prices set forth in any Order are deemed to include all taxes. If any manufacturer's excise or other similar or different taxes are paid on the Merchandise described in any Order and if such tax, or any part thereof, is refunded to Supplier, then Supplier shall immediately pay Company the amount of such refund.

**8. PRICE PROTECTION; PRICE GUARANTEE AND NOTICE OF PRICE INCREASES.** Supplier guarantees its prices against manufacturer's or Supplier's own price decline. If Supplier reduces its price on any Merchandise sold to Company, which Merchandise has not yet been delivered to Company by Supplier or, if consistent with Supplier's practice, which Merchandise is currently in Company's inventory (including Merchandise on hand, in warehouses and in transit), Supplier shall at Company's discretion either issue a check or give Company a credit equal to the price difference for such Merchandise, multiplied by the units of such Merchandise to be delivered by Supplier and/or currently in Company's inventory. For all Merchandise not yet shipped to Company, Supplier agrees to meet the price of any of its competitors selling comparable merchandise. If a court, regulatory agency or other government entity with jurisdiction finds that the prices on an Order are in excess of that allowed by any law or regulation of any governmental agency, the prices shall be automatically revised to equal a price which is not in violation of said law or regulation. If Company shall have made

payment before it is determined that there has been a violation of this section. Supplier shall promptly refund an amount of money equal to the difference between the price paid for the Merchandise and the price which is not in violation of this section. If contemporaneously with Supplier's sale of Merchandise to the Company, Supplier sells or offers to any competitor of Company any merchandise of like grade and quality at lower prices and/or on terms more favorable than those stated on the Order, the prices and/or terms of the Order shall be deemed automatically revised to equal the lowest prices and most favorable terms at which Supplier shall have sold or shall have offered such merchandise and payment shall be made accordingly. If Company shall become entitled to such lower prices, but shall have made payment at any prices in excess thereof, Supplier shall promptly refund the difference in price to Company. If there is a price increase, Supplier shall give Company written notice of any such increase at least sixty (60) days prior to the effective date of the increase.

#### 9. SUPPLIER EDI RESPONSIBILITIES.

- (a) Supplier shall electronically receive Orders and send Company invoices via EDI unless otherwise agreed to by Company in writing.
- (b) Supplier shall assure that access by its employees to the EDI interchange is restricted by password to those persons authorized to contractually bind Supplier.
- (c) Supplier's use of the EDI interchange acknowledges Supplier's review and acceptance of the terms and requirements for using the EDI system to contract electronically.
- (d) Supplier will establish a user I.D. to identify itself, and the presence of this user I.D. in the EDI interchange will be sufficient to verify the source of the data and the authenticity of the document.
- (e) Documents containing the user I.D. will constitute a signed writing, and neither party shall contest the validity or enforceability of the document on the basis of lack of a signature or sufficient identification of the parties.
- (f) EDI documents or printouts thereof shall constitute originals.
- (g) EDI documents will be retained by both Company and Supplier in a form that is accessible and reproducible.
- (h) If Company agrees to waive the EDI requirements of this section of this Agreement, Orders may be sent via overnight mail at Supplier's expense.

**10. PURCHASE COSTS AND CONDITIONS.** Supplier is responsible for verifying the accuracy of costs, discounts, allowances and all other terms of sale on all Orders. If incorrect information exists, Supplier shall notify Company not less than twenty-four (24) hours prior to shipment. If a change is necessary, no shipment is to commence without written confirmation of the change from an authorized member of Company's merchandising department. If Merchandise ships prior to discovery of an error on the Order, the parties shall confer within forty-eight (48) hours of such discovery to determine the actions to be taken regarding the erroneous Order.

**11. SHIPPER LOAD AND COUNT RESPONSIBILITIES.** Supplier who is shipping a full truckload collect, or full truckload under Company control, to Company will be responsible for monitoring its shipping process. Supplier is required to close the trailer, seal it with a Supplier-provided seal, and document the seal number on all copies of the Bill of Lading. All such shipments will be considered Shipper Load and Shipper Count, whether or not so notated. If Supplier fails to seal the trailer, or fails to reference and identify the seal on all copies of the Bill of Lading, and shortages occur, Supplier shall be liable for such shortage. The Shipper expressly agrees that the contractual provision herein shall supersede any contrary Bill of Lading term, clause, notation, other provision, or any other writing.

**12. DELIVERY TIME.** THE TIME SPECIFIED IN AN ORDER FOR SHIPMENT OF MERCHANDISE IS OF THE ESSENCE OF THIS AGREEMENT AND IF SUCH MERCHANDISE IS NOT SHIPPED WITHIN THE TIME SPECIFIED, COMPANY RESERVES THE RIGHT, AT ITS OPTION AND WITHOUT LIMITATION, TO CANCEL THE ORDER AND/OR REJECT ANY MERCHANDISE DELIVERED AFTER THE TIME SPECIFIED. In addition to the aforementioned remedy, Company may exercise any other remedies provided for in this Agreement or provided by applicable law, including but not limited to those remedies provided by the Uniform Commercial Code. Notwithstanding Company's right to cancel shipment, or to reject or revoke acceptance of Merchandise, Supplier agrees to inform Company immediately of any actual or anticipated failure to ship all or any part of an Order or the exact Merchandise called for in an Order on the shipment date specified. Acceptance of any Merchandise shipped after the specified shipment date shall not be construed as a waiver of any of Company's rights or remedies resulting from the late shipment.

**13. REPRESENTATIONS, WARRANTIES AND GUARANTEES.** By acceptance of an Order, Supplier represents, warrants and guarantees that:

- (a) The Merchandise will be new and not used, remanufactured, reconditioned or refurbished, and will comply with all specifications contained in such Order and will be of equal or better quality as all samples delivered to Company;
- (b) The Merchandise is genuine and is not counterfeit, adulterated, misbranded, falsely labeled or advertised or falsely invoiced within the meaning of any applicable local, state or federal laws or regulations;
- (c) The Merchandise has been labeled, advertised and invoiced in accordance with the requirements (if applicable) of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, the Textile Fiber Products Identification Act and any other applicable local, state or federal laws or regulations, and the sale of the Merchandise by Company does not and will not violate any such laws;
- (d) Reasonable and representative tests made in accordance with the requirements of the Flammable Fabrics Act (if applicable) show that the Merchandise is not so highly flammable as to be dangerous when worn by individuals;
- (e) The Merchandise is properly labeled as to content as required by applicable Federal Trade Commission Trade Practice Rules, the Fair Labor Standards Act, the Federal Food, Drug and Cosmetics Act and similar local, state or federal laws, rules or regulations;
- (f) The Merchandise shall be delivered in good and undamaged condition and shall, when delivered, be merchantable and fit and safe for the purposes for which the same are intended to be used, including but not limited to consumer use;
- (g) The Merchandise does not infringe upon or violate any patent, copyright, trademark, trade name, trade dress, trade secret or, without limitation, any other rights belonging to others, and all royalties owed by Supplier, if any, have been paid to the appropriate licensor;
- (h) All weights, measures, sizes, legends or descriptions printed, stamped, attached or otherwise indicated with regard to the Merchandise are true and correct, and conform and comply with all laws, rules, regulations, ordinances, codes and/or standards of federal, state and local governments relating to said Merchandise;
- (i) The Merchandise is not in violation of any other laws, ordinances, statutes, rules or regulations of the United States or any state or local government or any subdivision or agency thereof, including but not limited to all laws and regulations relating to health, safety, environment, serial and identification numbers, labeling and country of origin designation, toxic substances, OSHA and EPA regulations, Federal Meat Inspection Act or Poultry Products Inspections Act (or any other food safety statute) and the requirements of California Proposition 65, and such Merchandise or the sale thereof by Company do not and will not violate any such laws;
- (j) All Merchandise shall have an accurate twelve (12) digit manufacturer-assigned UPC number that complies with Company's UPC requirements, as amended from time to time;
- (k) There is no other impediment or restriction, legal or otherwise, that limits, prohibits or prevents Supplier from selling and delivering the Merchandise to Company or limits, prohibits or prevents Company from reselling the Merchandise to its customers;

(l) The Merchandise is mined, produced, manufactured, assembled and packaged in compliance with the Standards; and  
(m) The Merchandise is not transshipped for the purpose of mislabeling, evading quota or country of origin restrictions or avoiding compliance with the Standards. Where applicable, Supplier agrees to provide Company with a current, complete and accurate Material Safety Data Sheet ("MSDS") for said Merchandise;  
(n) If any particular item of Merchandise under this Agreement contains a powder, liquid, gel or paste that is not intended for human consumption; a compressed gas or propellant (such as an aerosol); or a flammable solid (such as matches), Supplier shall notify Company. If the item Merchandise contains such properties, Company's Chemicals Return Policy shall govern all returns of such Merchandise and Supplier shall promptly elect return options under that policy.

It shall be within the sole discretion of Company to determine if Supplier has breached the above-mentioned representations, warranties and guarantees. In addition to the representations, warranties and guarantees contained in this paragraph, all other representations, warranties and guarantees provided by law, including but not limited to any warranties provided by the Uniform Commercial Code, are specifically incorporated herein. Nothing contained in this Agreement or an Order shall be deemed a waiver of any representations, warranties or guarantees implied by law.

**14. INDEMNIFICATION.** Supplier shall protect, defend, hold harmless and indemnify Company, including its officers, directors, employees and agents, from and against any and all lawsuits, claims, demands, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs), regardless of the cause or alleged cause thereof, and regardless of whether such matters are groundless, fraudulent or false, arising out of any actual or alleged:

- (a) Misappropriation or infringement of any patent, trademark, trade dress, trade secret, copyright or other right relating to any Merchandise;
- (b) Death of or injury to any person; damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged use of or latent or patent defect in, such Merchandise, including but not limited to (i) any actual or alleged failure to provide adequate warnings, labelings or instructions, (ii) any actual or alleged improper construction or design of said Merchandise, or (iii) any actual or alleged failure of said merchandise to comply with specifications or with any express or implied warranties of Supplier;
- (c) Violation of any law, statute, ordinance, governmental administrative order, rule or regulation relating to the merchandise, or to any of its components or ingredients; or to its manufacture, shipment, labeling, use or sale, or to any failure to provide a Material Safety Data Sheet or certification;
- (d) Act, activity or omission of Supplier or any of its employees, representatives or agents, including but not limited to activities on Company's premises and the use of any vehicle, equipment, fixture or material of Supplier in connection with any sale to or service for the Company; and
- (e) Any installation by Supplier of Merchandise covered by this Agreement.

Supplier shall promptly notify Company of the assertion, filing or service of any lawsuit, claim, demand, action, liability or other matter that is or may be covered by this indemnity, and shall immediately take such action as may be necessary or appropriate to protect the interests of Company, its officers, directors, employees and agents. Any and all counsel selected or provided by Supplier to represent or defend Company or any of its officers, directors, employees or agents shall accept and acknowledge receipt of Company's Indemnity Counsel Guidelines, and shall conduct such representation or defense strictly in accordance with such Guidelines. If Company in its sole discretion shall determine that such counsel has not done so, or appears unwilling or unable to do so, Company may replace such counsel with other counsel of Company's own choosing. In such event, any and all fees and expenses of Company's new counsel, together with any and all expenses or costs incurred on account of the change of counsel, shall be paid or reimbursed by Supplier as part of its indemnity obligation hereunder. Company shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against Company or any of its officers, directors, employees or agents. The duties and obligations of Supplier created hereby shall not be affected or limited in any way by Company's extension of express or implied warranties to its customers.

**15. RECALLS.** If Merchandise is the subject of a Recall, whether initiated by Supplier, Company or a government entity (including the issuance of safety notices), Supplier shall be responsible for all matters and costs associated with the Recall, including but not limited to:

- (a) Consumer notification and contact;
- (b) All expenses and losses incurred by Company in connection with such Recall (and where applicable, any products with which the Recalled Merchandise has been packaged, consolidated or commingled), including but not limited to refunds to customers, lost profits, transportation costs and all other costs associated therewith; and
- (c) Initial contact and reporting of the Recall to any government agency having jurisdiction over the affected Merchandise.

If a government agency initiates any inquiry or investigation relating to the Merchandise or similar goods manufactured or supplied by Supplier, Supplier shall notify Company immediately thereof and take reasonable steps to resolve the matter without exposing Company to any liability or risk.

**16. LIMITATION OF DAMAGES.** In no event shall Company be liable for any punitive, special, incidental or consequential damages of any kind (including but not limited to loss of profits, business revenues, business interruption and the like), arising from or relating to the relationship between Supplier and Company, including all prior dealings and agreements, or the conduct of business under or breach of this Agreement or any Order, Company's cancellation of any Order or Orders or the termination of business relations with Supplier, regardless of whether the claim under which such damages are sought is based upon breach of warranty, breach of contract, negligence, tort, strict liability, statute, regulation or any other legal theory or law, even if Company has been advised by Supplier of the possibility of such damages.

**17. REMEDIES.** Supplier's failure to comply with any of the terms and conditions of this Agreement or any Order shall be grounds for the exercise by Company of any one or more of the following remedies:

- (a) Cancellation of all or any part of any undelivered Order without notice, including but not limited to the balance of any remaining installments on a multiple-shipment Order;
- (b) Rejection (or revocation of acceptance) of all or any part of any delivered shipment. Upon rejection or revocation of acceptance of any part of or all of a shipment, Company may return the Merchandise or hold it at Supplier's risk and expense. Payment of any invoice shall not limit Company's right to reject or revoke acceptance. Company's right to reject and return or hold Merchandise at Supplier's expense and risk shall also extend to Merchandise which is returned by Company's customers. Company may, at its option, require Supplier to grant a full refund or credit to Company of the price actually paid by any customer of Company for any such item in lieu of replacement with respect to any item. Company shall be under no duty to inspect the Merchandise, and notice to Supplier of rejection

shall be deemed given within a reasonable time if given within a reasonable time after notice of defects or deficiencies has been given to Company by its customers. In respect of any Merchandise rejected (or acceptance revoked) by Company, there shall be charged to Supplier all expenses incurred by Company in (i) unpacking, examining, repacking and storing such Merchandise (it being agreed that in the absence of proof of a higher expense that the Company shall claim an allowance for each rejection at the rate of 10% of the price for each rejection made by Company) and (ii) landing and reshipping such Merchandise. Unless Company otherwise agrees in writing, Supplier shall not have the right to make a conforming delivery within the contract time;

(c) Termination of all current and future business relationships;

(d) Assessment of monetary fines as determined in Company's reasonable discretion;

(e) Recovery from Supplier of any damages sustained by Company as a result of Supplier's breach or default; and

(f) Buyer's remedies under the Uniform Commercial Code and such other remedies as are provided under applicable law.

These remedies are not exclusive and are in addition to all other remedies available to Company at law or in equity.

**18. INSURANCE REQUIREMENTS.** Supplier is required to obtain and maintain the following insurance coverage from a carrier acceptable to Company in the amounts and with the conditions listed below:

a) Commercial General Liability, including Contractual, Personal & Advertising Injury, Products and Completed Operations coverage, with certificate holder named as Additional Insured as evidenced by attached endorsement or blanket additional insured coverage provided by the policy. Policy shall be occurrence based with limits of no less than \$5,000,000 per occurrence, without any aggregate limits or \$50,000,000 in the aggregate. Defense costs shall not apply against coverage limits. High Risk Suppliers (as defined by Company) shall maintain policy limits of not less than \$10,000,000 per occurrence without any aggregate limits or \$100,000,000 in the aggregate.

b) Statutory Workers' Compensation Coverage for a Supplier whose employees will be entering Company's premises, with \$1,000,000 in employers' liability coverage and a waiver of subrogation where Permitted By Law.

c) Automobile Coverage, with certificate holder named as Additional Insured as evidenced by attached endorsement or blanket additional insured coverage provided by the policy, for a Supplier whose employees or agents will be driving on Company's premises or making delivery to Company's premises shall be occurrence based with limits of no less than \$5,000,000 per occurrence, without any aggregate limits or \$50,000,000 in the aggregate. Defense costs shall not apply against coverage limits.

d) Supplier shall provide at least thirty (30) days' written notice prior to any cancellation of any policy of insurance maintained hereunder, and each such policy shall obligate the insurer to provide at least thirty (30) days' written notice to Company in advance of any contemplated cancellation or termination thereof.

e) Supplier's insurance shall be considered primary, non-contributory and not excess coverage.

A copy of Supplier's current Certificate of Insurance with the following requirements must be submitted with this Agreement:

• Certificate Holder should read: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 702 SW 8th Street, Bentonville, AR 72716-0145, Attn: Risk Management

• Renewals of Certificates of Insurance must be submitted prior to expiration of Insurance coverage

• Existing Suppliers must include Supplier Number on Certificate of Insurance.

• Please direct any questions regarding your insurance to Risk Management at (479) 277-1658 or (479) 277-2890.

**SUPPLIER CONTACT FOR PRODUCT LIABILITY CLAIMS:**

Name: BLITZ USA  
Address: 404 26TH AVENUE NW  
City/State/Zip: MIAMI, OK 743540000  
Telephone: 8003313795  
Fax Number: 9185421380

Insuring Company: LIBERTY INTERNATIONAL  
Telephone: 8003313795 Extension #: 177  
Extension #: 177  
e-mail: CDELEON@BLITZUSA.COM

**19. FORCE MAJEURE.** If any place of business or other premises of Company shall be affected by lockouts, strikes, riots, war, acts of terrorism, fire, civil insurrection, flood, earthquake or any other casualty or cause beyond Company's control, which might reasonably tend to impede or delay the reception, handling, inspecting, processing or marketing of the Merchandise covered by this Agreement, Company may, at its option, cancel all or any part of the undelivered Order hereunder by giving written notice to Supplier which notice shall be effective upon mailing.

**20. ASSIGNMENT.** Except as specifically set forth in Section 6, no part of this Agreement or of any Order shall be assignable by Supplier without the written consent of Company, and Company shall not be obligated to accept a tender of performance by any assignee, unless Company shall have previously expressly consented in writing to such an assignment.

**21. PUBLICITY; USE OF NAME AND INTELLECTUAL PROPERTY.** Supplier shall not refer to Company in any advertising or published communication without the prior written approval of Company. Supplier shall not use, or allow to be used, Company's name, logo, trademarks, service marks, patents, copyrights or trade dress without the prior written approval of Company. Company may use Supplier's name, logo, trademarks, service marks, patents, copyrights and trade dress in connection with Company's marketing of the Merchandise.

**22. COMPLIANCE WITH STANDARDS FOR SUPPLIER.** Supplier warrants that it has read and understands and will comply with the requirements set forth in the Standards located at <http://www.walmartstores.com/Files/SupplierStandards.pdf>, or attached, as may be reasonably amended from time to time by Company. If the Supplier is not able to view the Standards on-line they may request a current copy from Supplier Development, their local Global Procurement office or from the Direct Imports Division. Company reserves the right to cancel any outstanding Order, refuse any shipments and otherwise cease to do business with Supplier if Supplier fails to comply with any terms of the Standards or if Company reasonably believes Supplier has failed to do so.

**23. SEVERABILITY; WAIVER.** At the option of Company, no finding that a part of this Agreement is invalid or unenforceable shall affect the validity of any other part hereof. Company's failure to enforce at any time any provision of this Agreement will not be construed as a waiver of such provision or of any rights thereafter to enforce such provision. Any waiver by Company of any of the terms and conditions of this Agreement or any Order must be in writing signed by an authorized representative of Company.

**24. FORUM SELECTION; CHOICE OF LAW; STATUTE OF LIMITATIONS.** This Agreement, any and all Orders, and any and all disputes arising thereunder or relating thereto, whether sounding in contract or tort, shall be governed by and construed in accordance with the laws of the State of Arkansas without regard to the internal law of Arkansas regarding conflicts of law, and the federal and/or state courts of Benton and Washington County, Arkansas, shall have exclusive jurisdiction over any actions or suits relating thereto. The parties mutually acknowledge and agree that they shall not raise, and hereby waive, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing. Any legal action brought by Supplier against Company with respect to this Agreement or any Orders shall be filed in one of the above referenced jurisdictions within two (2) years after the cause of action arises or it shall be deemed forever waived. **The parties acknowledge that they have read and understand this clause and agree willingly to its terms.**

**25. ATTORNEY FEES AND INTEREST OBLIGATIONS.** Company reserves the right to charge Supplier interest at the rate of 12% per annum or such lower rate as may be permitted under applicable law for any obligations owed by Supplier to Company, including debit balances not paid within thirty (30) days after due, until such amounts are paid in full, and Company will be entitled to recover from Supplier its attorneys' fees and costs incurred in collecting any past-due obligation.

**26. NOTICES.** Unless otherwise specifically provided for herein, any notice or demand which under the terms of this Agreement or under any statute must or may be given or made shall be in writing and shall be given or made by overnight express service addressed as follows: if to Company: Wal-Mart Stores, Inc., Attn: General Merchandise Manager (identify department or category), 702 SW 8th Street, Bentonville, AR 72716. If to Supplier: to Supplier's address set forth above. Such notice or demand shall be deemed given on the second (2nd) business day after deposit of such notice or demand with the overnight express service. The above addresses may be changed at any time by giving prior written notice as provided above.

**27. TERM OF AGREEMENT.** This Agreement ends one year after the Effective Date. This Agreement may only be renewed or extended by an agreement signed by an authorized officer of Company and Supplier. Supplier and Company are under no obligation to extend the term of this Agreement or to renew this Agreement. Neither Supplier nor Company should take any actions in reliance upon this Agreement being extended or renewed. Neither party shall be responsible for any costs incurred by the other in anticipation of the extension or renewal of this Agreement.

**28. INFORMATION SECURITY.** Supplier represents that it currently follows industry best practices as a means to prevent any compromise of its information systems, computer networks, or data files ("Systems") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Company. Supplier agrees to immediately give Company notice if the security of its Systems are breached or compromised in any way.

Supplier agrees to apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and anti-virus software; maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and operation security mechanisms in the manner in which they were intended sufficient to ensure the Company will not be impacted nor operations disrupted; and permitting only authorized users access to computer systems, applications, and Retail Link.

Supplier specifically agrees to: use up-to-date anti-virus tools to remove known viruses and malware from any email message or data transmitted to Company; prevent the transmission of attacks on Company via the network connections between Company and the Supplier; and prevent unauthorized access to Company systems via the Supplier's networks and access codes.

In accordance with all applicable US and International privacy laws, Supplier agrees to safeguard confidential protected individually identifiable personal information (health, financial, identity) which are received, transmitted, managed, processed, etc. and to require subcontractor or agent to meet these same security agreements.

Financial service suppliers, who handle personally identifiable financial information of our customers agree to maintain a current SAS70 Type II audit.

**29. SURVIVAL OF PROVISIONS.** The provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including but not limited to representations, warranties, guarantees, indemnifications, payment of obligations, remedies, forum selection and statute of limitations) shall survive its termination.

The parties hereto agree that this Agreement, the Standards and any Order constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings and understandings, whether written (including any electronic record) or oral, regarding the subject matter hereof, are superseded by this Agreement. Any changes in this Agreement shall be in writing and executed by both parties. Furthermore, if there is a conflict of terms between this Agreement and an Order, this Agreement shall be the controlling document.

We (Company) will never assume that you (Supplier) will be willing to extend or renew this Agreement or to accept any specific volume of Orders. Conversely, we urge you never to assume that this Agreement will be renewed or extended by us or that we will issue Orders for specific volume of Merchandise, even if your impression is based on discussions you may have had with Company representatives. No Company representative has authority to renew or extend this Agreement except in a writing signed by an authorized officer of Company, and no Company representative has authority to order Merchandise except an Authorized Buyer through an Order issued pursuant to and subject to the terms of this Agreement.

WAL-MART STORES, INC.**STANDARDS FOR SUPPLIERS**

Wal-Mart Stores, Inc. ("Wal-Mart") has enjoyed success by adhering to three basic beliefs since its founding in 1962:

1. Respect for the Individual
2. Service to our Customers
3. Strive for Excellence

Wal-Mart strives to conduct its business in a manner that reflects these three basic beliefs. Our suppliers are expected to conform to these beliefs and the values inherent therein and to assure these beliefs and values are reflected in their contracting, subcontracting or other relationships.

Since Wal-Mart believes that the conduct of its suppliers can be attributed to Wal-Mart and affect its reputation, Wal-Mart requires its suppliers to conform to standards of business practices which are consistent with the three beliefs described above. More specifically, Wal-Mart requires conformity from its suppliers with the following standards, and hereby reserves the right to make periodic, unannounced inspections of supplier's facilities to satisfy itself of supplier's compliance with these standards:

**1. COMPLIANCE WITH APPLICABLE LAWS.** All Suppliers shall comply with the legal requirements and standards of their industry under the national laws of the countries in which the Suppliers are doing business, including the labor and employment laws of those countries, and any applicable U.S. laws. Should the legal requirements and standards of the industry conflict, Suppliers must, at a minimum, be in compliance with the legal requirements of the country in which the products are manufactured. If, however, the industry standards exceed the country's legal requirements, Wal-Mart will favor Suppliers who meet such industry standards. Suppliers shall comply with all requirements of all applicable governmental agencies. Necessary invoices and required documentation must be provided in compliance with the applicable law. Suppliers shall warrant to Wal-Mart that no merchandise sold to Wal-Mart infringes the patents, trademarks or copyrights of others and shall provide to Wal-Mart all necessary licenses for selling merchandise sold to Wal-Mart, which is under license from a third party. All merchandise shall be accurately marked or labeled with its country of origin in compliance with applicable laws and including those of the country of manufacture. All shipments of merchandise will be accompanied by the requisite documentation issued by the proper governmental authorities, including but not limited to Form A's, import licenses, quota allocations and visas and shall comply with orderly marketing agreements, voluntary restraint agreements and other such agreements in accordance with applicable law. The commercial invoice shall, in English and in any other language deemed appropriate, accurately describe all the merchandise contained in the shipment, identify the country of origin of each article contained in the shipment, and shall list all payments, whether direct or indirect, to be made for the merchandise, including, but not limited to any assists, selling commissions or royalty payments. Backup documentation, and any Wal-Mart required changes to any documentation, will be provided by Suppliers promptly. Failure to supply complete and accurate information may result in cancellation or rejection of the goods.

**2. EMPLOYMENT.** At a minimum, Wal-Mart expects its "suppliers" to meet the following terms and conditions of employment:

**Compensation.** Suppliers shall fairly compensate their employees by providing wages and benefits, which are in compliance with the local and national laws of the jurisdictions in which the suppliers are doing business or which are consistent with the prevailing local standards in the jurisdictions in which the suppliers are doing business, if the prevailing local standards are higher.

**Hours of Labor.** Suppliers shall maintain reasonable employee work hours in compliance with local standards and applicable laws of the jurisdictions in which the suppliers are doing business. Employees shall not work more than 72 hours per 6 days or work more than a maximum total working hours of 14 hours per calendar day (midnight to midnight). The factory should be working toward achieving a 60-hour work week. Wal-Mart will not use suppliers who, on a regularly scheduled basis, require employees to work in excess of the statutory requirements without proper compensation as required by applicable law. Employees should be permitted reasonable days off (at least one day off for every seven-day period) and leave privileges.

**Forced Labor/Prison Labor.** Forced or prison labor will not be tolerated by Wal-Mart. Suppliers shall maintain employment on a voluntary basis. Wal-Mart will not accept products from suppliers who utilize in any manner forced labor or prison labor in the manufacture or in their contracting, subcontracting or other relationships for the manufacture of their products.

**Child Labor.** Wal-Mart will not tolerate the use of child labor. Wal-Mart will not accept products from suppliers who utilize in any manner child labor in the manufacture or in the contracting, subcontracting or other relationships for the manufacture of their products. No person shall be employed at an age younger than the law of the jurisdiction of manufacture allows. Where country laws allow children below the age of 14 years to work, Wal-Mart will only recognize the minimum working age of 14 years, regardless of the law of the jurisdiction.

**Discrimination/Human Rights.** Wal-Mart recognizes that cultural differences exist and different standards apply in various jurisdictions, however, we believe that all terms and conditions of employment should be based on an individual's ability to do the job, not on the basis of personal characteristics or beliefs. Wal-Mart favors suppliers who have a social and political commitment to basic principles of human rights and who do not discriminate against their employees in hiring practices or any other term or condition of work, on the basis of race, color, national origin, gender, sexual orientation, religion, disability, or other similar factors.

**3. WORKPLACE ENVIRONMENT.** Wal-Mart expects its suppliers to maintain a safe, clean, healthy and productive environment for its employees. Factories producing merchandise to be sold by Wal-Mart shall provide adequate medical facilities, fire exits and safety equipment, well-lighted and comfortable workstations, clean restrooms, and adequate living quarters where necessary. Workers should be adequately trained to perform their jobs safely. Wal-Mart will not do business with any supplier that provides an unhealthy or hazardous work environment or which utilizes mental or physical disciplinary practices.

**4. CONCERN FOR THE ENVIRONMENT.** We believe it is our role to be a leader in protecting our environment. We encourage our



customers and associates to always reduce, reuse, and recycle. We also encourage our suppliers to reduce excess packaging and to use recycled and non-toxic materials whenever possible. We will favor suppliers who share our commitment to the environment.

**5. FACTORY INSPECTION REQUIREMENTS.** Scheduled inspections should typically be conducted a maximum of three times per year to ensure compliance with the standards, terms, and conditions set forth herein. Wal-Mart reserves the right to conduct unannounced factory inspections.

In the case of domestic suppliers, factory audits shall typically be conducted by Wal-Mart approved third party audit firms. All charges related to the third party inspection and certification of such facilities shall be paid fully by the supplier. Any supplier who fails or refuses to comply with these standards is subject to immediate cancellation of any and all outstanding orders, refusal or return of any shipment, and termination of its business relationship with Wal-Mart. In the case of suppliers working through Global Procurement Direct Imports, audits should be conducted by Wal-Mart's internal auditors. Once a factory has been audited and assessed either green or yellow by either Wal-Mart's internal auditors or an approved third party audit firm, the factory is valid for any supplier to use for Wal-Mart business.

**6. RIGHT OF INSPECTION.** To further assure proper implementation of and compliance with the standards set forth herein, Wal-Mart or a third party designated by Wal-Mart will undertake affirmative measures, such as on-site inspection of production facilities, to implement and monitor said standards. Any supplier which fails or refuses to comply with these standards or does not allow inspection of production facilities is subject to immediate cancellation of any and all outstanding orders, refusal or return any shipment, and otherwise cease doing business with Wal-Mart.

**7. CONFIDENTIALITY.** Supplier shall not at any time, during or after the term of this Agreement, disclose to others and will not take or use for its own purposes or the purpose of others any trade secrets, confidential information, knowledge, designs, data, know-how, or any other information reasonably considered "confidential." Supplier recognizes that this obligation applies not only to technical information, designs and marketing, but also to any business information that Wal-Mart treats as confidential. Any information that is not readily available to the public shall be considered to be a trade secret and confidential. Upon termination of this Agreement, for any cause, supplier shall return all items belonging to Wal-Mart and all copies of documents containing Wal-Mart's trade secrets, confidential information, knowledge, data or know-how in supplier's possession or under supplier's control.

**8. WAL-MART GIFT AND GRATUITY POLICY.** Wal-Mart Stores, Inc. has a very strict policy which forbids and prohibits the solicitation, offering or acceptance of any gifts, gratuities or any form of "pay off" or facilitation fee as a condition of doing business with Wal-Mart; as a form of gratitude; or as an attempt to gain favor or accept merchandise or services at a lesser degree than what was agreed. Wal-Mart believes in delivering and receiving only the total quantity agreed.

Any supplier, factory or manufacturer who violates this policy by offering or accepting any form of gift or gratuity to/from any associate, employee, agent or affiliate of Wal-Mart Stores, Inc. will be subject to all loss of existing and future business, regardless of whether the gift or gratuity was accepted. In addition, a supplier, factory or manufacturer who violates this policy, will be reported to the appropriate governmental authorities of the supplier's respective and affiliated jurisdictions.

Failure to report such information will result in severe action against such supplier, trading company or factory including but not limited to termination of all existing and future business relationships and monetary damages.

**STANDARDS FOR SUPPLIERS** A copy of these Standards for Suppliers shall be posted in a location visible to all employees at all facilities that manufacture products for Wal-Mart Stores, Inc. and its affiliates. Any person with knowledge of a violation of any of these standards by a Supplier or a Wal-Mart associate should call 1-800-WM-ETHIC (1-800-963-8442) (in countries other than the United States, dial AT&T's U.S.A. Direct Number first) or write to: Wal-Mart Stores, Inc., Business Ethics Committee, 702 SW 8th St., Bentonville, AR 72716-8095.

**9. ACKNOWLEDGMENT OF STANDARDS.** As an officer or duly authorized representative of my company, a Supplier of Wal-Mart, I have read the principles and terms described in this document and understand my company's business relationship with Wal-Mart is based upon said company being in full compliance with these principles and terms. I further understand that failure by a Supplier to abide by any of the terms and conditions stated herein may result in the immediate cancellation by Wal-Mart of all outstanding orders with that Supplier and refusal by Wal-Mart to continue to do business in any manner with said Supplier. I am signing this Supplier Agreement as a corporate representative of my company, to acknowledge, accept and agree to abide by the standards, terms and conditions set forth herein between my company and Wal-Mart. I hereby affirm that all actions, legal and corporate, to make this Standards for Suppliers binding and enforceable against my company have been completed.

Supplier No. 210427

Department No. 10

Effective Date: 03/11/2010

## APPENDIX

This Appendix constitutes and is part and parcel of the Supplier Agreement. The terms of the Supplier Agreement are binding and enforceable as to this Appendix.

## STANDARD PURCHASE ORDER ALLOWANCE

These allowances apply to each Purchase Order issued, unless otherwise agreed to by the parties.

| CODE ALLOWANCE                                                                                                                      | DISC | SPECIAL INSTRUCTIONS | HOW PAID |    |    | WHEN PAID |   |   |   |   |
|-------------------------------------------------------------------------------------------------------------------------------------|------|----------------------|----------|----|----|-----------|---|---|---|---|
|                                                                                                                                     |      |                      | OI       | CM | CK | EI        | M | Q | S | A |
| SA New Store/Club Discount (%)<br>Applied to each line item for each new store P.O.)                                                | 10   |                      | X        |    |    | X         |   |   |   |   |
| OL New Store/Club Discount (%)<br>Represents contribution of total business to New Store Program.)                                  |      |                      |          |    |    |           |   |   |   |   |
| NW New Distribution Center                                                                                                          | 10   |                      | X        |    |    | X         |   |   |   |   |
| WA Warehouse Allowance                                                                                                              | 0.5  |                      | X        |    |    | X         |   |   |   |   |
| QD Warehouse Distribution Allowance                                                                                                 | 0.5  |                      | X        |    |    | X         |   |   |   |   |
| DM Defective/Returned Mdse.<br>Allowance - Not applicable in Puerto Rico. (When selected must mark option 3 under warranty policy.) |      |                      |          |    |    |           |   |   |   |   |
| SD Soft Goods Defective Allow                                                                                                       |      |                      |          |    |    |           |   |   |   |   |
| PA Promotional Allowance                                                                                                            |      |                      |          |    |    |           |   |   |   |   |
| VD Volume Discount                                                                                                                  |      |                      |          |    |    |           |   |   |   |   |
| FA Freight Allowance                                                                                                                |      |                      |          |    |    |           |   |   |   |   |
| AA Advertising Allowance                                                                                                            |      |                      |          |    |    |           |   |   |   |   |
| TR TV/Radio Media Allowance                                                                                                         |      |                      |          |    |    |           |   |   |   |   |
| DA Display/Endcap Allowance                                                                                                         |      |                      |          |    |    |           |   |   |   |   |
| EB Early Buy Allowance                                                                                                              |      |                      |          |    |    |           |   |   |   |   |
| HA Handling Allowance                                                                                                               |      |                      |          |    |    |           |   |   |   |   |

OI-Off Invoice; CM-Credit Memo; CK-Check; EI-Each Invoice; M-Monthly; Q-Quarterly; S-Semi-Annually; A-Annually;

**IMPORTANT NOTICE: ALL PAYMENTS OF MONIES OWED PURSUANT TO THIS SUPPLIER AGREEMENT AND PURCHASE ORDERS MUST BE MAILED TO THE FOLLOWING ADDRESS: WAL-MART STORES, INC./SAM'S CLUB, C/O CORPORATE ACCOUNTING, P.O. BOX 500787, ST. LOUIS, MISSOURI 63150-0787. Note: Any payments on your Wal-Mart or SAM'S CLUB Credit Card should be mailed to the billing address indicated on your credit card statement, not the address above.**

## PAYMENT TERMS

0 Cash Discount — Enter whole percents

NEW STORE/WHSE TERMS IF DIFFERENT THAN REGULAR TERMS:

0 Cash Discount Days Available (Must be filled in if a Cash Discount is used)

60 Net Payment Days Available (Must be at least one day more than Cash Discount Days Available)

End Of Month Dating Yes X No

## SHIPPING TERMS

## FREIGHT TERMS

## MINIMUM FOR PREPAID FREIGHT TERMS.

☒ Collect — F.O.B. Supplier

0 Pounds

☐ Prepaid — F.O.B. Company

0 Cases/Units

☐ Prepaid To consolidator — F.O.B. Company's Consolidator

0 Whole Dollars

No freight charges are to be added to invoices. Refer to the current Routing Guide for detailed instructions.

## CONDITION OF SALE

☐ Guaranteed Sales ☐ Consignment ☐ Preticketing ☐ Prepricing ☐ Stock Balancing ☐ Shelf Labels  
☐ Point of Sale (Pay from Scan) ☐ Other



### Product Chemical Information

Does Supplier currently sell, or anticipate selling, to Company under this Agreement any item of Merchandise that is or contains a powder, liquid, gel or paste that is not intended for human consumption; a compressed gas or propellant (such as an aerosol); or a flammable solid (such as matches)?

☐ Yes ☒ No

### RETURN POLICY (SUPPLIER MUST CHOOSE ONE OPTION BELOW AND COMPLETE THE NECESSARY INFORMATION.)

Supplier will be charged current merchandise costs plus a 10% handling charge for all returned merchandise. Returned merchandise will be shipped with return freight charges billed back to Supplier. Returns are F.O.B. Purchaser.

#### ☐ SUPPLIER OPTION #1: SUPPLIER WANTS RETURNED MERCHANDISE SENT TO THEM:

☐ A. Returned merchandise will be sent to Supplier direct from each store.

Permanent return authorization #: \_\_\_\_\_ if required for shipment. If automatic return is not possible, a toll free number should be provided or Supplier must accept Purchaser's collect calls to secure return authorization over the phone.

Phone: \_\_\_\_\_ Extension #: \_\_\_\_\_ Contact: \_\_\_\_\_

☐ B. Returned merchandise will be sent from store locations to the Return Center and sent to Supplier.

Permanent return authorization #: \_\_\_\_\_ if required for shipment. If automatic return is not possible, a toll free number must be provided or Supplier must provide a fax number and a contact name.

Phone: \_\_\_\_\_ Extension #: \_\_\_\_\_ Contact: \_\_\_\_\_

Permanent return authorization #: \_\_\_\_\_

RETURN SHIPPING ADDRESS: Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Special Instructions:

#### ☒ SUPPLIER OPTION #2: SUPPLIER DOES NOT WANT RETURNED MERCHANDISE SENT TO THEM:

☒ A. Returned merchandise must be disposed of by the individual store, OR

☐ B. Returned merchandise will be sent from store locations to the Return Center for disposal. [Choose one of the following three.]

☐ i. Return Center may dispose of returned merchandise through salvage outlets or recycling operations, without accounting for the proceeds of such disposal;

☐ ii. Return Center must destroy returned merchandise. (Supplier may be charged for any additional costs of destruction.);

☐ iii. Return Center may donate returned merchandise to charity.

Special Instructions:

#### ☐ SUPPLIER OPTION #3: CUSTOMER SATISFACTION MERCHANDISE ALLOWANCE:

Supplier will allow the Customer Satisfaction Merchandise Allowance stated in this agreement. The percentage must be adequate to cover all costs associated with returned merchandise, including but not limited to defective/returned merchandise and handling costs, or additional claims will be filed by the Return Center at our fiscal year end.

☐ A. Return Center may dispose of returned merchandise through salvage outlets or recycling operations, without accounting for the proceeds of such disposal;

☐ B. Return Center must destroy returned merchandise. (Supplier may incur additional handling charges to cover costs of destruction.);

☐ C. Returned merchandise will be sent from store locations to the Return Center and sent to Supplier. If Supplier requests the returned merchandise be sent to them; in addition to the Customer Satisfaction Allowance, the merchandise will be shipped with return freight charges billed back to Supplier; OR

☐ D. Return Center may donate Return Merchandise to charity.

Permanent return authorization #: \_\_\_\_\_

RETURN SHIPPING ADDRESS: Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Special Instructions:

In electing **SUPPLIER OPTION 2.B.iii**, or **SUPPLIER OPTION 3.D**, above, Supplier acknowledges and agrees that not all returned merchandise is suitable for donation. If the returned merchandise is deemed by Company to be unsuitable for donation, Supplier agrees that Company may either (i) destroy such returned merchandise (and Supplier may be charged for any additional costs of destruction) or (ii) dispose of such returned merchandise through recycling operations, without accounting for the proceeds of such disposal. Provided however, Company agrees to retain documentation of returned merchandise for a period of one (1) year after the date on such documentation. Supplier shall have the right, upon reasonable prior notice to Company, to examine and make copies of such documentation related to Supplier's returned merchandise. Supplier shall be responsible for any and all expenses related to the examination or copies of such records.

### SHIPPING INSTRUCTIONS

Supplier will ship all merchandise in accordance with the then current Shipping and Routing Instructions. Wal-Mart Stores, Inc. (the "Routing Instructions"). Supplier acknowledges it has received a copy of the Routing Instructions. The current Routing Instructions, as may be reasonably amended by Company from time to time, shall be available on Retail Link. Each purchase order will show a routing, which is determined by Company's Traffic Department. Supplier is liable for the excess transportation cost if the designated routing is not followed. If Supplier has a question concerning the routing selected, Supplier must call Company's Traffic Department before

releasing the shipment at the following number: (479) 273-6359.

| SHIPPING POINT | SHIPPING STATE |
|----------------|----------------|
| MOUNT ORAB     | OH             |

# AMENDMENT TO SUPPLIER AGREEMENT

This Amendment is to the Supplier Agreement dated // between WAL-MART with its corporate offices at 702 SW 8th St., Bentonville, AR 72716 (hereinafter "Company") and BLITZ USA with its corporate offices at 404 26TH AVENUE NW (hereinafter "Supplier").

This Amendment shall be fully incorporated into the Supplier Agreement and any conflict between the Supplier Agreement and this Amendment shall be resolved in favor of this Amendment. Subsequent modifications, amendments, or addenda shall not change or affect this Amendment in any way unless this Amendment is specifically referenced therein and executed by Supplier and Company.

Pursuant to the foregoing, Company and Supplier specifically agree to the following changes to the Agreement:

Except as modified by this Amendment or by any other written agreement between the parties executed after the date of this Amendment, the sale and purchase of merchandise or goods by the parties will be controlled by the terms of the Supplier Agreement. This Amendment and the Supplier Agreement constitute the entire agreement between the parties with respect to its subject matter and no modification, change or alteration shall be effective unless in writing and executed by both parties.

VonMoss, Sandy

Supplier

Underwood, Ryan

Buyer

Peterson, Ryan

Divisional Merchandise  
Manager

Moore, Mike

General Merchandise  
Manager

**Job Printed By:**

**dcravana**

**At 6:00:13 PM**

**On 11/2/2011**

## SUPPLIER AGREEMENT

Supplier Number: 210427-10-2

Effective Date: 03/11/2010

This Supplier Agreement ("Agreement") between the party listed below ("Supplier") and Wal-Mart Stores, Inc., Wal-Mart Stores East, LP, Wal-Mart Stores East, Inc., Wal-Mart Stores Texas, LP, Sam's West, Inc., Sam's East, Inc. and affiliates (hereinafter referred to collectively as "Company") sets forth Supplier's qualifications and the general terms of the business relationship between Company and Supplier. The parties agree that all sales and deliveries of all Merchandise (as defined below) by Supplier to Company and all Orders (as defined below) by Company will be covered by and subject to the terms of this Agreement, the Standards for Suppliers (which is attached and incorporated by reference) and any Order signed or initialed (electronically or otherwise) by an Authorized Buyer (as defined below) for Company. This Agreement becomes effective on the date shown above and remains effective for the term set forth herein. The execution and submission of this Agreement does not impose upon Company any obligation to purchase Merchandise.

### General Supplier Information

Supplier's Business Classification: (Please disregard this section if Supplier is not a female or minority-owned business)

Woman-Owned? ☐ Minority Owned? ☐  
\_BLACK \_ASIAN-PACIFIC AMERICAN \_INDIAN \_ESKIMO \_HISPANIC \_NATIVE AMERICAN \_ALEUT \_NATIVE HAWAIIAN

If Supplier falls within any of the above classes, and has been certified as minority-owned by a government agency or purchasing council, Supplier is qualified for the first step in the Wal-Mart Minority/Female Owned Business Development Program (the "Supplier Development Program"). Supplier agrees to provide to Company a copy of its certification as a prerequisite to qualification in the Supplier Development Program. For further information, please contact the Wal-Mart Supplier Development Office at 1-800-604-4555.

Enter the Federal Taxpayer Identification Number (TIN) of the Supplier Named Below.

If a TIN has not been issued, enter the Employer's Social Security Number.

TIN: \*\*\*\*\*8104

Type of Payee (Check Only One): ☐ Individual/Sole Proprietorship ☒ Corporation ☐ Partnership ☐ Other

Supplier Information: BLITZ USA  
Address: 404 26TH AVENUE NW  
Address 2:  
City/State/Zip: MIAMI, OK 74354

President: ROCKY FLICK Phone: 8003313795  
Acct. Executive or V.P. Sales: BRIAN BRASSFIELD Phone: 8003313795  
Acct. Contact: SANDY VONMOSS Phone: 8003313795

### ADDRESS TO MAIL PAYMENT:

Supplier Name: BLITZ USA  
Address: PO BOX 678006  
Address 2:  
City/State/Zip: DALLAS, TX 752678006  
Factor Name:

Supplier Also Doing Business As: (Attach a list to Agreement if space below is insufficient):

Supplier Number: 210427

### ADDRESS TO SEND ORDERS:

Supplier Name: BLITZ USA  
Attention: SANDY VONMOSS  
Address: 404 26TH AVE NW  
City/State/Zip: MIAMI, OK 743540000  
Street Address for use by delivery services other than the U.S. Mail, if not already shown in the Purchase Order address above:

Room: 0

Expedite Orders: Phone: Extension #: 193  
8003313795

### ADDRESS TO MAIL CLAIM DOCUMENTATION:

Attention: SANDY VONMOSS  
Address: 404 26TH AVE NW  
City/State/Zip: MIAMI, OK 743540000  
Accounting Phone Number: Extension #: 193  
8003313795  
Toll Free Number: Fax Number:

### ADDRESS TO SEND PRICING TICKETS:

Supplier Name:  
Attention:  
Address:  
City/State/Zip:

Has Supplier or any related entity previously conducted business with Company? Yes ☒ No ☐ If so, under what name(s)?  
BLITZ USA

## STANDARD TERMS AND CONDITIONS

**1. DEFINITIONS.** As used in this Agreement or any Company issued Order, the following capitalized words shall have the following meanings:

(a) "Account" shall mean any right to receive payments arising under this Agreement.

(b) "Anticipation" shall mean the intentional or unintentional payment of obligations prior to the due date which results in a monetary adjustment in amounts payable to Supplier.

(c) "Authorized Buyer" shall mean any General Merchandise Manager, Divisional Merchandise Manager, Buyer 1, 2 or 3 and replenishment manager assigned to the Wal-Mart category/department corresponding to the purchased Merchandise.

(d) "Merchandise" shall mean all products, goods, materials, equipment, articles, and tangible items supplied by Supplier to Company and all packaging, instructions, warnings, warranties, advertising and other services included therewith.

(e) "Electronic Data Interchange" ("EDI") shall mean the moving of information regarding specific business processes (invoicing, ordering, reporting, etc.) electronically between two or more businesses. The information is transmitted electronically structured

according to standards mandated by Company.

(f) "End of Month Dating" shall mean payment terms beginning at the first of the following month rather than from the receipt of merchandise, if the merchandise is received on or after the 24th of the month.

(g) "High Risk Supplier" shall mean a Supplier identified as such by Company in view of the nature of the Supplier's products, the severity of claims made against Supplier's products, the frequency of claims made, past litigation involving the Supplier's products and other factors deemed relevant by Company.

(h) "Order" shall mean any written or electronic purchase order issued by Company.

(i) "Recall" shall mean any removal of Merchandise from the stream of commerce initiated by Supplier, a government entity or Company.

(j) "Standards" shall mean the Wal-Mart Stores, Inc. Standards for Suppliers, attached hereto.

(k) "Vendor Master" shall mean the accounting department of Company responsible for control and processing of new supplier agreements and updates to existing agreements.

**2. ORDERS; CANCELLATION.** Supplier may ship only after receipt of an Order. Acceptance of an Order may be made only by shipment of the Merchandise in accordance herewith. Acceptance is expressly limited to all of the terms and conditions of such Order, including, all shipping, routing and billing instructions and all attachments and supplemental instructions delivered therewith. Shipments made contrary to Company's routing instructions will be deemed F.O.B. Destination (either store, club or warehouse). Supplier's invoice, confirmation memorandum or other writing may not vary the terms of any Order. Supplier's failure to comply with one or more terms of an Order shall constitute an event of default and shall be grounds for the exercise by Company of any of the remedies provided for in this Agreement or by applicable law. Projections, past purchasing history and representations about quantities to be purchased are not binding, and Company shall not be liable for any act or expenditure (including but not limited to expenditures for equipment, materials, packaging or other capital expenditures) by Supplier in reliance on them. Company may cancel all or any part of an Order at any time prior to shipment.

**3. SUPPLIER FINANCIAL INFORMATION; SALES TO COMPANY.** Supplier shall submit to Company with this Agreement one of the following: (1) a complete set of audited current financial statements, (2) a current Dun & Bradstreet financial report, or (3) if publicly held, Supplier's most recent annual report to shareholders and management proxy information. If Company's purchases from Supplier are anticipated by Supplier to constitute twenty percent (20%) or more of Supplier's gross annual sales on a calendar year basis, Supplier agrees to notify Company of this fact, in writing, within thirty (30) days of Supplier becoming aware of such possibility.

**4. PAYMENT TERMS; CASH DISCOUNT; ANTICIPATION.** Supplier shall transmit invoices on the same day Merchandise is shipped, but payment terms shall date from Company's receipt of the Merchandise. If Supplier selects End of Month Dating on Appendix 1 hereto, Merchandise received after the 24th of any month shall be payable as if received on the first day of the following month. Any cash discount selected by Supplier on Appendix 1 will be calculated on the gross amount of Supplier's invoice. Anticipation may be taken upon the mutual consent of the parties.

**5. SET-OFF; RESERVATION OF ACCOUNT; CREDIT BALANCE.** Company may set off against amounts payable under any Order all present and future indebtedness of Supplier to Company arising from this or any other transaction whether or not related hereto. If Company determines that Supplier's performance under an Order and/or this Agreement is likely to be impaired, Company may establish a reserve on Supplier's Account to satisfy Supplier's actual or anticipated obligations to Company arising from any such Order or this Agreement, by withholding payment of Supplier's invoices. Supplier agrees that any credit balance will be paid in cash to Company upon written request.

**IMPORTANT NOTICE: ALL PAYMENTS OF MONIES OWED PURSUANT TO THIS SUPPLIER AGREEMENT AND PURCHASE ORDERS MUST BE MAILED TO THE FOLLOWING ADDRESS:**  
**WAL-MART STORES, INC./SAM'S CLUB, C/O CORPORATE ACCOUNTING, P.O. BOX 500787, ST. LOUIS, MISSOURI 63150-0787.**

**Note: Any payments on your Wal-Mart or SAM'S CLUB Credit Card should be mailed to the billing address indicated on your credit card statement, not the address above.**

**6. NOTICE REGARDING ASSIGNMENT OF ACCOUNTS; ACCOUNT DISPUTES.** Supplier shall provide Company written notice of an assignment, factoring, or other transfer of its Account at least 30 days prior to such assignment, factoring, or other transfer taking legal effect. Such written notice shall include the name and address of the assignee/transferee, the date the assignment is to begin, and terms of the assignment, and shall be considered delivered upon receipt of such written notice by Vendor Master. Supplier may have only one assignment, factoring or transfer of its Account effective at any time. The assignment of any Account hereunder shall not affect Company's rights set forth in Section 5 of this Agreement. Supplier shall defend indemnify and hold Company harmless from any and all lawsuits, claims, demands, actions, damages (including reasonable attorney fees, court costs, obligations, liabilities or liens) arising from or related to the assignment, transfer or factoring of its Account. Supplier releases and waives any right, claim or action against Company for amounts due and owing under this Agreement where Supplier has not complied with the notice requirements of this provision. Notices required pursuant to this Section shall be mailed to: Wal-Mart Stores, Inc., Attn: Vendor Master, 1108 S.E. 10th St. Bentonville, AR 72716-0880.

Notwithstanding the foregoing, any dispute or any other circumstance, Company reserves the right to remit payment to Supplier.

**7. TAXES.** The prices set forth in any Order are deemed to include all taxes. If any manufacturer's excise or other similar or different taxes are paid on the Merchandise described in any Order and if such tax, or any part thereof, is refunded to Supplier, then Supplier shall immediately pay Company the amount of such refund.

**8. PRICE PROTECTION; PRICE GUARANTEE AND NOTICE OF PRICE INCREASES.** Supplier guarantees its prices against manufacturer's or Supplier's own price decline. If Supplier reduces its price on any Merchandise sold to Company, which Merchandise has not yet been delivered to Company by Supplier or, if consistent with Supplier's practice, which Merchandise is currently in Company's inventory (including Merchandise on hand, in warehouses and in transit), Supplier shall at Company's discretion either issue a check or give Company a credit equal to the price difference for such Merchandise, multiplied by the units of such Merchandise to be delivered by Supplier and/or currently in Company's inventory. For all Merchandise not yet shipped to Company, Supplier agrees to meet the price of any of its competitors selling comparable merchandise. If a court, regulatory agency or other government entity with jurisdiction finds that the prices on an Order are in excess of that allowed by any law or regulation of any governmental agency, the prices shall be automatically revised to equal a price which is not in violation of said law or regulation. If Company shall have made

payment before it is determined that there has been a violation of this section. Supplier shall promptly refund an amount of money equal to the difference between the price paid for the Merchandise and the price which is not in violation of this section. If contemporaneously with Supplier's sale of Merchandise to the Company, Supplier sells or offers to any competitor of Company any merchandise of like grade and quality at lower prices and/or on terms more favorable than those stated on the Order, the prices and/or terms of the Order shall be deemed automatically revised to equal the lowest prices and most favorable terms at which Supplier shall have sold or shall have offered such merchandise and payment shall be made accordingly. If Company shall become entitled to such lower prices, but shall have made payment at any prices in excess thereof, Supplier shall promptly refund the difference in price to Company. If there is a price increase, Supplier shall give Company written notice of any such increase at least sixty (60) days prior to the effective date of the increase.

#### **9. SUPPLIER EDI RESPONSIBILITIES.**

- (a) Supplier shall electronically receive Orders and send Company invoices via EDI unless otherwise agreed to by Company in writing.
- (b) Supplier shall assure that access by its employees to the EDI interchange is restricted by password to those persons authorized to contractually bind Supplier.
- (c) Supplier's use of the EDI interchange acknowledges Supplier's review and acceptance of the terms and requirements for using the EDI system to contract electronically.
- (d) Supplier will establish a user I.D. to identify itself, and the presence of this user I.D. in the EDI interchange will be sufficient to verify the source of the data and the authenticity of the document.
- (e) Documents containing the user I.D. will constitute a signed writing, and neither party shall contest the validity or enforceability of the document on the basis of lack of a signature or sufficient identification of the parties.
- (f) EDI documents or printouts thereof shall constitute originals.
- (g) EDI documents will be retained by both Company and Supplier in a form that is accessible and reproducible.
- (h) If Company agrees to waive the EDI requirements of this section of this Agreement, Orders may be sent via overnight mail at Supplier's expense.

**10. PURCHASE COSTS AND CONDITIONS.** Supplier is responsible for verifying the accuracy of costs, discounts, allowances and all other terms of sale on all Orders. If incorrect information exists, Supplier shall notify Company not less than twenty-four (24) hours prior to shipment. If a change is necessary, no shipment is to commence without written confirmation of the change from an authorized member of Company's merchandising department. If Merchandise ships prior to discovery of an error on the Order, the parties shall confer within forty-eight (48) hours of such discovery to determine the actions to be taken regarding the erroneous Order.

**11. SHIPPER LOAD AND COUNT RESPONSIBILITIES.** Supplier who is shipping a full truckload collect, or full truckload under Company control, to Company will be responsible for monitoring its shipping process. Supplier is required to close the trailer, seal it with a Supplier-provided seal, and document the seal number on all copies of the Bill of Lading. All such shipments will be considered Shipper Load and Shipper Count, whether or not so notated. If Supplier fails to seal the trailer, or fails to reference and identify the seal on all copies of the Bill of Lading, and shortages occur, Supplier shall be liable for such shortage. The Shipper expressly agrees that the contractual provision herein shall supersede any contrary Bill of Lading term, clause, notation, other provision, or any other writing.

**12. DELIVERY TIME:** THE TIME SPECIFIED IN AN ORDER FOR SHIPMENT OF MERCHANDISE IS OF THE ESSENCE OF THIS AGREEMENT AND IF SUCH MERCHANDISE IS NOT SHIPPED WITHIN THE TIME SPECIFIED, COMPANY RESERVES THE RIGHT, AT ITS OPTION AND WITHOUT LIMITATION, TO CANCEL THE ORDER AND/OR REJECT ANY MERCHANDISE DELIVERED AFTER THE TIME SPECIFIED. In addition to the aforementioned remedy, Company may exercise any other remedies provided for in this Agreement or provided by applicable law, including but not limited to those remedies provided by the Uniform Commercial Code. Notwithstanding Company's right to cancel shipment, or to reject or revoke acceptance of Merchandise, Supplier agrees to inform Company immediately of any actual or anticipated failure to ship all or any part of an Order or the exact Merchandise called for in an Order on the shipment date specified. Acceptance of any Merchandise shipped after the specified shipment date shall not be construed as a waiver of any of Company's rights or remedies resulting from the late shipment.

**13. REPRESENTATIONS, WARRANTIES AND GUARANTEES.** By acceptance of an Order, Supplier represents, warrants and guarantees that:

- (a) The Merchandise will be new and not used, remanufactured, reconditioned or refurbished, and will comply with all specifications contained in such Order and will be of equal or better quality as all samples delivered to Company;
- (b) The Merchandise is genuine and is not counterfeit, adulterated, misbranded, falsely labeled or advertised or falsely invoiced within the meaning of any applicable local, state or federal laws or regulations;
- (c) The Merchandise has been labeled, advertised and invoiced in accordance with the requirements (if applicable) of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, the Textile Fiber Products Identification Act and any other applicable local, state or federal laws or regulations, and the sale of the Merchandise by Company does not and will not violate any such laws;
- (d) Reasonable and representative tests made in accordance with the requirements of the Flammable Fabrics Act (if applicable) show that the Merchandise is not so highly flammable as to be dangerous when worn by individuals;
- (e) The Merchandise is properly labeled as to content as required by applicable Federal Trade Commission Trade Practice Rules, the Fair Labor Standards Act, the Federal Food, Drug and Cosmetics Act and similar local, state or federal laws, rules or regulations;
- (f) The Merchandise shall be delivered in good and undamaged condition and shall, when delivered, be merchantable and fit and safe for the purposes for which the same are intended to be used, including but not limited to consumer use;
- (g) The Merchandise does not infringe upon or violate any patent, copyright, trademark, trade name, trade dress, trade secret or, without limitation, any other rights belonging to others, and all royalties owed by Supplier, if any, have been paid to the appropriate licensor;
- (h) All weights, measures, sizes, legends or descriptions printed, stamped, attached or otherwise indicated with regard to the Merchandise are true and correct, and conform and comply with all laws, rules, regulations, ordinances, codes and/or standards of federal, state and local governments relating to said Merchandise;
- (i) The Merchandise is not in violation of any other laws, ordinances, statutes, rules or regulations of the United States or any state or local government or any subdivision or agency thereof, including but not limited to all laws and regulations relating to health, safety, environment, serial and identification numbers, labeling and country of origin designation, toxic substances, OSHA and EPA regulations, Federal Meat Inspection Act or Poultry Products Inspections Act (or any other food safety statute) and the requirements of California Proposition 65, and such Merchandise or the sale thereof by Company do not and will not violate any such laws;
- (j) All Merchandise shall have an accurate twelve (12) digit manufacturer-assigned UPC number that complies with Company's UPC requirements, as amended from time to time;
- (k) There is no other impediment or restriction, legal or otherwise, that limits, prohibits or prevents Supplier from selling and delivering the Merchandise to Company or limits, prohibits or prevents Company from reselling the Merchandise to its customers;

(l) The Merchandise is mined, produced, manufactured, assembled and packaged in compliance with the Standards; and  
(m) The Merchandise is not transhipped for the purpose of mislabeling, evading quota or country of origin restrictions or avoiding compliance with the Standards. Where applicable, Supplier agrees to provide Company with a current, complete and accurate Material Safety Data Sheet ("MSDS") for said Merchandise;  
(n) If any particular item of Merchandise under this Agreement contains a powder, liquid, gel or paste that is not intended for human consumption, a compressed gas or propellant (such as an aerosol); or a flammable solid (such as matches), Supplier shall notify Company. If the item Merchandise contains such properties, Company's Chemicals Return Policy shall govern all returns of such Merchandise and Supplier shall promptly elect return options under that policy.

It shall be within the sole discretion of Company to determine if Supplier has breached the above-mentioned representations, warranties and guarantees. In addition to the representations, warranties and guarantees contained in this paragraph, all other representations, warranties and guarantees provided by law, including but not limited to any warranties provided by the Uniform Commercial Code, are specifically incorporated herein. Nothing contained in this Agreement or an Order shall be deemed a waiver of any representations, warranties or guarantees implied by law.

**14. INDEMNIFICATION.** Supplier shall protect, defend, hold harmless and indemnify Company, including its officers, directors, employees and agents, from and against any and all lawsuits, claims, demands, actions, liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs), regardless of the cause or alleged cause thereof, and regardless of whether such matters are groundless, fraudulent or false, arising out of any actual or alleged:

- (a) Misappropriation or infringement of any patent, trademark, trade dress, trade secret, copyright or other right relating to any Merchandise;
- (b) Death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered; resulting or claimed to result in whole or in part from any actual or alleged use of or latent or patent defect in, such Merchandise, including but not limited to (i) any actual or alleged failure to provide adequate warnings, labelings or instructions, (ii) any actual or alleged improper construction or design of said Merchandise, or (iii) any actual or alleged failure of said merchandise to comply with specifications or with any express or implied warranties of Supplier;
- (c) Violation of any law, statute, ordinance, governmental administrative order, rule or regulation relating to the merchandise, or to any of its components or ingredients, or to its manufacture, shipment, labeling, use or sale, or to any failure to provide a Material Safety Data Sheet or certification;
- (d) Act, activity or omission of Supplier or any of its employees, representatives or agents, including but not limited to activities on Company's premises and the use of any vehicle, equipment, fixture or material of Supplier in connection with any sale to or service for the Company; and
- (e) Any installation by Supplier of Merchandise covered by this Agreement.

Supplier shall promptly notify Company of the assertion, filing or service of any lawsuit, claim, demand, action, liability or other matter that is or may be covered by this indemnity, and shall immediately take such action as may be necessary or appropriate to protect the interests of Company, its officers, directors, employees and agents. Any and all counsel selected or provided by Supplier to represent or defend Company or any of its officers, directors, employees or agents shall accept and acknowledge receipt of Company's Indemnity Counsel Guidelines, and shall conduct such representation or defense strictly in accordance with such Guidelines. If Company in its sole discretion shall determine that such counsel has not done so, or appears unwilling or unable to do so, Company may replace such counsel with other counsel of Company's own choosing. In such event, any and all fees and expenses of Company's new counsel, together with any and all expenses or costs incurred on account of the change of counsel, shall be paid or reimbursed by Supplier as part of its indemnity obligation hereunder. Company shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against Company or any of its officers, directors, employees or agents. The duties and obligations of Supplier created hereby shall not be affected or limited in any way by Company's extension of express or implied warranties to its customers.

**15. RECALLS.** If Merchandise is the subject of a Recall, whether initiated by Supplier, Company or a government entity (including the issuance of safety notices), Supplier shall be responsible for all matters and costs associated with the Recall, including but not limited to:

- (a) Consumer notification and contact;
- (b) All expenses and losses incurred by Company in connection with such Recall (and where applicable, any products with which the Recalled Merchandise has been packaged, consolidated or commingled), including but not limited to refunds to customers, lost profits, transportation costs and all other costs associated therewith; and
- (c) Initial contact and reporting of the Recall to any government agency having jurisdiction over the affected Merchandise.

If a government agency initiates any inquiry or investigation relating to the Merchandise or similar goods manufactured or supplied by Supplier, Supplier shall notify Company immediately thereof and take reasonable steps to resolve the matter without exposing Company to any liability or risk.

**16. LIMITATION OF DAMAGES.** In no event shall Company be liable for any punitive, special, incidental or consequential damages, of any kind (including but not limited to loss of profits, business revenues, business interruption and the like), arising from or relating to the relationship between Supplier and Company, including all prior dealings and agreements, or the conduct of business under or breach of this Agreement or any Order, Company's cancellation of any Order or Orders or the termination of business relations with Supplier, regardless of whether the claim under which such damages are sought is based upon breach of warranty, breach of contract, negligence, tort, strict liability, statute, regulation or any other legal theory or law, even if Company has been advised by Supplier of the possibility of such damages.

**17. REMEDIES.** Supplier's failure to comply with any of the terms and conditions of this Agreement or any Order shall be grounds for the exercise by Company of any one or more of the following remedies:

- (a) Cancellation of all or any part of any undelivered Order without notice, including but not limited to the balance of any remaining installments on a multiple-shipment Order;
- (b) Rejection (or revocation of acceptance) of all or any part of any delivered shipment. Upon rejection or revocation of acceptance of any part of or all of a shipment, Company may return the Merchandise or hold it at Supplier's risk and expense. Payment of any invoice shall not limit Company's right to reject or revoke acceptance. Company's right to reject and return or hold Merchandise at Supplier's expense and risk shall also extend to Merchandise which is returned by Company's customers. Company may, at its option, require Supplier to grant a full refund or credit to Company of the price actually paid by any customer of Company for any such item in lieu of replacement with respect to any item. Company shall be under no duty to inspect the Merchandise, and notice to Supplier of rejection



shall be deemed given within a reasonable time if given within a reasonable time after notice of defects or deficiencies has been given to Company by its customers. In respect of any Merchandise rejected (or acceptance revoked) by Company, there shall be charged to Supplier all expenses incurred by Company in (i) unpacking, examining, repacking and storing such Merchandise (it being agreed that in the absence of proof of a higher expense that the Company shall claim an allowance for each rejection at the rate of 10% of the price for each rejection made by Company) and (ii) landing and reshipping such Merchandise. Unless Company otherwise agrees in writing, Supplier shall not have the right to make a conforming delivery within the contract time;

(c) Termination of all current and future business relationships;

(d) Assessment of monetary fines as determined in Company's reasonable discretion;

(e) Recovery from Supplier of any damages sustained by Company as a result of Supplier's breach or default; and

(f) Buyer's remedies under the Uniform Commercial Code and such other remedies as are provided under applicable law.

These remedies are not exclusive and are in addition to all other remedies available to Company at law or in equity.

**18. INSURANCE REQUIREMENTS.** Supplier is required to obtain and maintain the following insurance coverage from a carrier acceptable to Company in the amounts and with the conditions listed below:

a) Commercial General Liability, including Contractual, Personal & Advertising Injury, Products and Completed Operations coverage, with certificate holder named as Additional Insured as evidenced by attached endorsement or blanket additional insured coverage provided by the policy. Policy shall be occurrence based with limits of no less than \$5,000,000 per occurrence, without any aggregate limits or \$50,000,000 in the aggregate. Defense costs shall not apply against coverage limits. High Risk Suppliers (as defined by Company) shall maintain policy limits of not less than \$10,000,000 per occurrence without any aggregate limits or \$100,000,000 in the aggregate.

b) Statutory Workers' Compensation Coverage for a Supplier whose employees will be entering Company's premises, with \$1,000,000 in employers' liability coverage and a waiver of subrogation where Permitted By Law.

c) Automobile Coverage, with certificate holder named as Additional Insured as evidenced by attached endorsement or blanket additional insured coverage provided by the policy, for a Supplier whose employees or agents will be driving on Company's premises or making delivery to Company's premises shall be occurrence based with limits of no less than \$5,000,000 per occurrence, without any aggregate limits or \$50,000,000 in the aggregate. Defense costs shall not apply against coverage limits.

d) Supplier shall provide at least thirty (30) days' written notice prior to any cancellation of any policy of insurance maintained hereunder, and each such policy shall obligate the insurer to provide at least thirty (30) days' written notice to Company in advance of any contemplated cancellation or termination thereof.

e) Supplier's insurance shall be considered primary, non-contributory and not excess coverage.

A copy of Supplier's current Certificate of Insurance with the following requirements must be submitted with this Agreement:

• Certificate Holder should read: WAL-MART STORES, INC., ITS SUBSIDIARIES & ITS AFFILIATES, 702 SW 8th Street, Bentonville, AR 72716-0145, Attn: Risk Management

• Renewals of Certificates of Insurance must be submitted prior to expiration of insurance coverage

• Existing Suppliers must include Supplier Number on Certificate of Insurance.

• Please direct any questions regarding your insurance to Risk Management at (479) 277-1858 or (479) 277-2890.

**SUPPLIER CONTACT FOR PRODUCT LIABILITY CLAIMS:**

|                 |                     |                   |                                  |
|-----------------|---------------------|-------------------|----------------------------------|
| Name:           | BLITZ USA           | Insuring Company: | LIBERTY INTERNATIONAL            |
| Address:        | 404 26TH AVENUE NW  | Telephone:        | 8003313795      Extension #: 177 |
| City/State/Zip: | MIAMI, OK 743540000 |                   |                                  |
| Telephone:      | 8003313795          | Extension #:      | 177                              |
| Fax Number:     | 9185421380          | e-mail:           | CDELEON@BLITZUSA.COM             |

**19. FORCE MAJEURE.** If any place of business or other premises of Company shall be affected by lockouts, strikes, riots, war, acts of terrorism, fire, civil insurrection, flood, earthquake or any other casualty or cause beyond Company's control, which might reasonably tend to impede or delay the reception, handling, inspecting, processing or marketing of the Merchandise covered by this Agreement, Company may, at its option, cancel all or any part of the undelivered Order hereunder by giving written notice to Supplier which notice shall be effective upon mailing.

**20. ASSIGNMENT.** Except as specifically set forth in Section 6, no part of this Agreement or of any Order shall be assignable by Supplier without the written consent of Company, and Company shall not be obligated to accept a tender of performance by any assignee, unless Company shall have previously expressly consented in writing to such an assignment.

**21. PUBLICITY; USE OF NAME AND INTELLECTUAL PROPERTY.** Supplier shall not refer to Company in any advertising or published communication without the prior written approval of Company. Supplier shall not use, or allow to be used, Company's name, logo, trademarks, service marks, patents, copyrights or trade dress without the prior written approval of Company. Company may use Supplier's name, logo, trademarks, service marks, patents, copyrights and trade dress in connection with Company's marketing of the Merchandise.

**22. COMPLIANCE WITH STANDARDS FOR SUPPLIER.** Supplier warrants that it has read and understands and will comply with the requirements set forth in the Standards located at <http://www.walmartstores.com/Files/SupplierStandards.pdf>, or attached, as may be reasonably amended from time to time by Company. If the Supplier is not able to view the Standards on-line they may request a current copy from Supplier Development, their local Global Procurement office or from the Direct Imports Division. Company reserves the right to cancel any outstanding Order, refuse any shipments and otherwise cease to do business with Supplier if Supplier fails to comply with any terms of the Standards or if Company reasonably believes Supplier has failed to do so.

**23. SEVERABILITY; WAIVER.** At the option of Company, no finding that a part of this Agreement is invalid or unenforceable shall affect the validity of any other part hereof. Company's failure to enforce at any time any provision of this Agreement will not be construed as a waiver of such provision or of any rights thereafter to enforce such provision. Any waiver by Company of any of the terms and conditions of this Agreement or any Order must be in writing signed by an authorized representative of Company.

**24. FORUM SELECTION; CHOICE OF LAW; STATUTE OF LIMITATIONS.** This Agreement, any and all Orders, and any and all disputes arising thereunder or relating thereto, whether sounding in contract or tort, shall be governed by and construed in accordance with the laws of the State of Arkansas without regard to the internal law of Arkansas regarding conflicts of law, and the federal and/or state courts of Benton and Washington County, Arkansas, shall have exclusive jurisdiction over any actions or suits relating thereto. The parties mutually acknowledge and agree that they shall not raise, and hereby waive, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing. Any legal action brought by Supplier against Company with respect to this Agreement or any Orders shall be filed in one of the above referenced jurisdictions within two (2) years after the cause of action arises or it shall be deemed forever waived. **The parties acknowledge that they have read and understand this clause and agree willingly to its terms.**

**25. ATTORNEY FEES AND INTEREST OBLIGATIONS.** Company reserves the right to charge Supplier interest at the rate of 12% per annum or such lower rate as may be permitted under applicable law for any obligations owed by Supplier to Company, including debit balances not paid within thirty (30) days after due, until such amounts are paid in full, and Company will be entitled to recover from Supplier its attorneys' fees and costs incurred in collecting any past-due obligation.

**26. NOTICES.** Unless otherwise specifically provided for herein, any notice or demand which under the terms of this Agreement or under any statute must or may be given or made shall be in writing and shall be given or made by overnight express service addressed as follows: if to Company: Wal-Mart Stores, Inc., Attn: General Merchandise Manager (identify department or category), 702 SW 8th Street, Bentonville, AR 72716. If to Supplier: to Supplier's address set forth above. Such notice or demand shall be deemed given on the second (2nd) business day after deposit of such notice or demand with the overnight express service. The above addresses may be changed at any time by giving prior written notice as provided above.

**27. TERM OF AGREEMENT.** This Agreement ends one year after the Effective Date. This Agreement may only be renewed or extended by an agreement signed by an authorized officer of Company and Supplier. Supplier and Company are under no obligation to extend the term of this Agreement or to renew this Agreement. Neither Supplier nor Company should take any actions in reliance upon this Agreement being extended or renewed. Neither party shall be responsible for any costs incurred by the other in anticipation of the extension or renewal of this Agreement.

**28. INFORMATION SECURITY.** Supplier represents that it currently follows industry best practices as a means to prevent any compromise of its information systems; computer networks, or data files ("Systems") by unauthorized users, viruses, or malicious computer programs which could in turn be propagated via computer networks, email, magnetic media or other means to Company. Supplier agrees to immediately give Company notice if the security of its Systems are breached or compromised in any way.

Supplier agrees to apply appropriate internal information security practices, including, but not limited to, using appropriate firewall and anti-virus software; maintaining said countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and operation security mechanisms in the manner in which they were intended sufficient to ensure the Company will not be impacted nor operations disrupted; and permitting only authorized users access to computer systems, applications, and Retail Link.

Supplier specifically agrees to: use up-to-date anti-virus tools to remove known viruses and malware from any email message or data transmitted to Company; prevent the transmission of attacks on Company via the network connections between Company and the Supplier; and prevent unauthorized access to Company systems via the Supplier's networks and access codes.

In accordance with all applicable US and International privacy laws, Supplier agrees to safeguard confidential protected individually identifiable personal information (health, financial, identity) which are received, transmitted, managed, processed, etc. and to require subcontractor or agent to meet these same security agreements.

Financial service suppliers, who handle personally identifiable financial information of our customers agree to maintain a current SAS70 Type II audit.

**29. SURVIVAL OF PROVISIONS.** The provisions of this Agreement which by their nature are intended to survive termination of this Agreement (including but not limited to representations, warranties, guarantees, indemnifications, payment of obligations, remedies, forum selection and statute of limitations) shall survive its termination.

The parties hereto agree that this Agreement, the Standards and any Order constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. All prior agreements, negotiations, dealings and understandings, whether written (including any electronic record) or oral, regarding the subject matter hereof, are superseded by this Agreement. Any changes in this Agreement shall be in writing and executed by both parties. Furthermore, if there is a conflict of terms between this Agreement and an Order, this Agreement shall be the controlling document.

We (Company) will never assume that you (Supplier) will be willing to extend or renew this Agreement or to accept any specific volume of Orders. Conversely, we urge you never to assume that this Agreement will be renewed or extended by us or that we will issue Orders for specific volume of Merchandise, even if your impression is based on discussions you may have had with Company representatives. No Company representative has authority to renew or extend this Agreement except in a writing signed by an authorized officer of Company, and no Company representative has authority to order Merchandise except an Authorized Buyer through an Order issued pursuant to and subject to the terms of this Agreement.

Supplier No. 210427

Department No. 10

Effective Date: 03/11/2010

**WAL-MART STORES, INC.**

**STANDARDS FOR SUPPLIERS**

Wal-Mart Stores, Inc. ("Wal-Mart") has enjoyed success by adhering to three basic beliefs since its founding in 1962:

1. Respect for the Individual
2. Service to our Customers
3. Strive for Excellence

Wal-Mart strives to conduct its business in a manner that reflects these three basic beliefs. Our suppliers are expected to conform to these beliefs and the values inherent therein and to assure these beliefs and values are reflected in their contracting, subcontracting or other relationships.

Since Wal-Mart believes that the conduct of its suppliers can be attributed to Wal-Mart and affect its reputation, Wal-Mart requires its suppliers to conform to standards of business practices which are consistent with the three beliefs described above. More specifically, Wal-Mart requires conformity from its suppliers with the following standards, and hereby reserves the right to make periodic, unannounced inspections of supplier's facilities to satisfy itself of supplier's compliance with these standards:

**1. COMPLIANCE WITH APPLICABLE LAWS.** All Suppliers shall comply with the legal requirements and standards of their industry under the national laws of the countries in which the Suppliers are doing business, including the labor and employment laws of those countries, and any applicable U.S. laws. Should the legal requirements and standards of the industry conflict, Suppliers must, at a minimum, be in compliance with the legal requirements of the country in which the products are manufactured. If, however, the industry standards exceed the country's legal requirements, Wal-Mart will favor Suppliers who meet such industry standards. Suppliers shall comply with all requirements of all applicable governmental agencies. Necessary invoices and required documentation must be provided in compliance with the applicable law. Suppliers shall warrant to Wal-Mart that no merchandise sold to Wal-Mart infringes the patents, trademarks or copyrights of others and shall provide to Wal-Mart all necessary licenses for selling merchandise sold to Wal-Mart, which is under license from a third party. All merchandise shall be accurately marked or labeled with its country of origin in compliance with applicable laws and including those of the country of manufacture. All shipments of merchandise will be accompanied by the requisite documentation issued by the proper governmental authorities, including but not limited to Form A's, import licenses, quota allocations and visas and shall comply with orderly marketing agreements, voluntary restraint agreements and other such agreements in accordance with applicable law. The commercial invoice shall, in English and in any other language deemed appropriate, accurately describe all the merchandise contained in the shipment, identify the country of origin of each article contained in the shipment, and shall list all payments, whether direct or indirect, to be made for the merchandise, including, but not limited to any assists, selling commissions or royalty payments. Backup documentation, and any Wal-Mart required changes to any documentation, will be provided by Suppliers promptly. Failure to supply complete and accurate information may result in cancellation or rejection of the goods.

**2. EMPLOYMENT.** At a minimum, Wal-Mart expects its "suppliers" to meet the following terms and conditions of employment:

**Compensation.** Suppliers shall fairly compensate their employees by providing wages and benefits, which are in compliance with the local and national laws of the jurisdictions in which the suppliers are doing business or which are consistent with the prevailing local standards in the jurisdictions in which the suppliers are doing business, if the prevailing local standards are higher.

**Hours of Labor.** Suppliers shall maintain reasonable employee work hours in compliance with local standards and applicable laws of the jurisdictions in which the suppliers are doing business. Employees shall not work more than 72 hours per 6 days or work more than a maximum total working hours of 14 hours per calendar day (midnight to midnight). The factory should be working toward achieving a 60-hour work week. Wal-Mart will not use suppliers who, on a regularly scheduled basis, require employees to work in excess of the statutory requirements without proper compensation as required by applicable law. Employees should be permitted reasonable days off (at least one day off for every seven-day period) and leave privileges.

**Forced Labor/Prison Labor.** Forced or prison labor will not be tolerated by Wal-Mart. Suppliers shall maintain employment on a voluntary basis. Wal-Mart will not accept products from suppliers who utilize in any manner forced labor or prison labor in the manufacture or in their contracting, subcontracting or other relationships for the manufacture of their products.

**Child Labor.** Wal-Mart will not tolerate the use of child labor. Wal-Mart will not accept products from suppliers who utilize in any manner child labor in the manufacture or in the contracting, subcontracting or other relationships for the manufacture of their products. No person shall be employed at an age younger than the law of the jurisdiction of manufacture allows. Where country laws allow children below the age of 14 years to work, Wal-Mart will only recognize the minimum working age of 14 years, regardless of the law of the jurisdiction.

**Discrimination/Human Rights.** Wal-Mart recognizes that cultural differences exist and different standards apply in various jurisdictions, however, we believe that all terms and conditions of employment should be based on an individual's ability to do the job, not on the basis of personal characteristics or beliefs. Wal-Mart favors suppliers who have a social and political commitment to basic principles of human rights and who do not discriminate against their employees in hiring practices or any other term or condition of work, on the basis of race, color, national origin, gender, sexual orientation, religion, disability, or other similar factors.

**3. WORKPLACE ENVIRONMENT.** Wal-Mart expects its suppliers to maintain a safe, clean, healthy and productive environment for its employees. Factories producing merchandise to be sold by Wal-Mart shall provide adequate medical facilities, fire exits and safety equipment, well-lighted and comfortable workstations, clean restrooms, and adequate living quarters where necessary. Workers should be adequately trained to perform their jobs safely. Wal-Mart will not do business with any supplier that provides an unhealthy or hazardous work environment or which utilizes mental or physical disciplinary practices.

**4. CONCERN FOR THE ENVIRONMENT.** We believe it is our role to be a leader in protecting our environment. We encourage our

customers and associates to always reduce, reuse, and recycle. We also encourage our suppliers to reduce excess packaging and to use recycled and non-toxic materials whenever possible. We will favor suppliers who share our commitment to the environment.

**5. FACTORY INSPECTION REQUIREMENTS.** Scheduled inspections should typically be conducted a maximum of three times per year to ensure compliance with the standards, terms, and conditions set forth herein. Wal-Mart reserves the right to conduct unannounced factory inspections.

In the case of domestic suppliers, factory audits shall typically be conducted by Wal-Mart approved third party audit firms. All charges related to the third party inspection and certification of such facilities shall be paid fully by the supplier. Any supplier who fails or refuses to comply with these standards is subject to immediate cancellation of any and all outstanding orders, refusal or return of any shipment, and termination of its business relationship with Wal-Mart. In the case of suppliers working through Global Procurement Direct Imports, audits should be conducted by Wal-Mart's internal auditors. Once a factory has been audited and assessed either green or yellow by either Wal-Mart's internal auditors or an approved third party audit firm, the factory is valid for any supplier to use for Wal-Mart business.

**6. RIGHT OF INSPECTION.** To further assure proper implementation of and compliance with the standards set forth herein, Wal-Mart or a third party designated by Wal-Mart will undertake affirmative measures, such as on-site inspection of production facilities, to implement and monitor said standards. Any supplier which fails or refuses to comply with these standards or does not allow inspection of production facilities is subject to immediate cancellation of any and all outstanding orders, refuse or return any shipment, and otherwise cease doing business with Wal-Mart.

**7. CONFIDENTIALITY.** Supplier shall not at any time, during or after the term of this Agreement, disclose to others and will not take or use for its own purposes or the purpose of others any trade secrets, confidential information, knowledge, designs, data, know-how, or any other information reasonably considered "confidential." Supplier recognizes that this obligation applies not only to technical information, designs and marketing, but also to any business information that Wal-Mart treats as confidential. Any information that is not readily available to the public shall be considered to be a trade secret and confidential. Upon termination of this Agreement, for any cause, supplier shall return all items belonging to Wal-Mart and all copies of documents containing Wal-Mart's trade secrets, confidential information, knowledge, data or know-how in supplier's possession or under supplier's control.

**8. WAL-MART GIFT AND GRATUITY POLICY.** Wal-Mart Stores, Inc. has a very strict policy which forbids and prohibits the solicitation, offering or acceptance of any gifts, gratuities or any form of "pay off" or facilitation fee as a condition of doing business with Wal-Mart as a form of gratitude, or as an attempt to gain favor or accept merchandise or services at a lesser degree than what was agreed. Wal-Mart believes in delivering and receiving only the total quantity agreed.

Any supplier, factory or manufacturer who violates this policy by offering or accepting any form of gift or gratuity to/from any associate, employee, agent or affiliate of Wal-Mart Stores, Inc. will be subject to all loss of existing and future business, regardless of whether the gift or gratuity was accepted. In addition, a supplier, factory or manufacturer who violates this policy, will be reported to the appropriate governmental authorities of the supplier's respective and affiliated jurisdictions.

Failure to report such information will result in severe action against such supplier, trading company or factory including but not limited to termination of all existing and future business relationships and monetary damages.

**STANDARDS FOR SUPPLIERS** A copy of these Standards for Suppliers shall be posted in a location visible to all employees at all facilities that manufacture products for Wal-Mart Stores, Inc. and its affiliates. Any person with knowledge of a violation of any of these standards by a Supplier or a Wal-Mart associate should call 1-800-WM-ETHIC (1-800-963-8442) (in countries other than the United States, dial AT&T's U.S.A. Direct Number first) or write to: Wal-Mart Stores, Inc., Business Ethics Committee, 702 SW 8th St., Bentonville, AR 72716-8095.

**9. ACKNOWLEDGMENT OF STANDARDS.** As an officer or duly authorized representative of my company, a Supplier of Wal-Mart, I have read the principles and terms described in this document and understand my company's business relationship with Wal-Mart is based upon said company being in full compliance with these principles and terms. I further understand that failure by a Supplier to abide by any of the terms and conditions stated herein may result in the immediate cancellation by Wal-Mart of all outstanding orders with that Supplier and refusal by Wal-Mart to continue to do business in any manner with said Supplier. I am signing this Supplier Agreement as a corporate representative of my company, to acknowledge, accept and agree to abide by the standards, terms and conditions set forth herein between my company and Wal-Mart; I hereby affirm that all actions, legal and corporate, to make this Standards for Suppliers binding and enforceable against my company have been completed;

Supplier No: 210427

Department No: 10  
APPENDIX

Effective Date: 03/11/2010

This Appendix constitutes and is part and parcel of the Supplier Agreement. The terms of the Supplier Agreement are binding and enforceable as to this Appendix.

## STANDARD PURCHASE ORDER ALLOWANCE

These allowances apply to each Purchase Order issued, unless otherwise agreed to by the parties.

| CODE | ALLOWANCE                                                                                                                                 | DISC<br>% | SPECIAL INSTRUCTIONS | HOW PAID |    |    | WHEN PAID |   |   |   |   |
|------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------------------|----------|----|----|-----------|---|---|---|---|
|      |                                                                                                                                           |           |                      | OI       | CM | CK | EI        | M | Q | S | A |
| SA   | New Store/Club Discount (%)<br>Applied to each line item for<br>each new store P.O.)                                                      | 10        |                      | X        |    |    | X         |   |   |   |   |
| OL   | New Store/Club Discount (%)<br>Represents contribution of total<br>business to New Store<br>Program.)                                     |           |                      |          |    |    |           |   |   |   |   |
| NW   | New Distribution Center                                                                                                                   | 10        |                      | X        |    |    | X         |   |   |   |   |
| WA   | Warehouse Allowance                                                                                                                       | 0.5       |                      | X        |    |    | X         |   |   |   |   |
| QD   | Warehouse Distribution<br>Allowance                                                                                                       | 0.5       |                      | X        |    |    | X         |   |   |   |   |
| DM   | Defective/Returned Mdse.<br>Allowance - Not applicable in<br>Puerto Rico. (When selected<br>must mark option 3 under<br>warranty policy.) |           |                      |          |    |    |           |   |   |   |   |
| SD   | Soft Goods Defective Allow                                                                                                                |           |                      |          |    |    |           |   |   |   |   |
| PA   | Promotional Allowance                                                                                                                     |           |                      |          |    |    |           |   |   |   |   |
| VD   | Volume Discount                                                                                                                           |           |                      |          |    |    |           |   |   |   |   |
| FA   | Freight Allowance                                                                                                                         |           |                      |          |    |    |           |   |   |   |   |
| AA   | Advertising Allowance                                                                                                                     |           |                      |          |    |    |           |   |   |   |   |
| TR   | TV/Radio Media Allowance                                                                                                                  |           |                      |          |    |    |           |   |   |   |   |
| DA   | Display/Endcap Allowance                                                                                                                  |           |                      |          |    |    |           |   |   |   |   |
| EB   | Early Buy Allowance                                                                                                                       |           |                      |          |    |    |           |   |   |   |   |
| HA   | Handling Allowance                                                                                                                        |           |                      |          |    |    |           |   |   |   |   |

OI-Off Invoice; CM-Credit Memo; CK-Check; EI-Each Invoice; M-Monthly; Q-Quarterly; S-Semi-Annually; A-Annually;

**IMPORTANT NOTICE: ALL PAYMENTS OF MONIES OWED PURSUANT TO THIS SUPPLIER AGREEMENT AND PURCHASE ORDERS MUST BE MAILED TO THE FOLLOWING ADDRESS: WAL-MART STORES, INC./SAM'S CLUB, C/O CORPORATE ACCOUNTING, P.O. BOX 500787, ST. LOUIS, MISSOURI 63150-0787. Note: Any payments on your Wal-Mart or SAM'S CLUB Credit Card should be mailed to the billing address indicated on your credit card statement, not the address above.**

## PAYMENT TERMS

0 Cash Discount --Enter whole percents  
0 Cash Discount Days Available(Must be  
filled in if a Cash Discount is used)  
60 Net Payment Days Available(Must be at  
least one day more than Cash Discount  
Days Available)  
End Of Month Dating Yes X No

NEW STORE/WHSE TERMS IF DIFFERENT THAN REGULAR TERMS:

## SHIPPING TERMS

## FREIGHT TERMS

X Collect - F.O.B Supplier  
Prepaid - F.O.B Company  
Prepaid To consolidator - F.O.B. Company's Consolidator

## MINIMUM FOR PREPAID FREIGHT TERMS

0 Pounds  
0 Cases/Units  
0 Whole Dollars

No freight charges are to be added to invoices. Refer to the current Routing Guide for detailed instructions.

## CONDITION OF SALE

Guaranteed Sales Consignment Preticketing Prepricing Stock Balancing Shelf Labels  
Point of Sale (Pay from Scan) Other

#### Product Chemical Information

Does Supplier currently sell, or anticipate selling, to Company under this Agreement any item of Merchandise that is or contains a powder, liquid, gel or paste that is not intended for human consumption; a compressed gas or propellant (such as an aerosol); or a flammable solid (such as matches)?

☐ Yes ☒ No

#### RETURN POLICY (SUPPLIER MUST CHOOSE ONE OPTION BELOW AND COMPLETE THE NECESSARY INFORMATION.)

Supplier will be charged current merchandise costs plus a 10% handling charge for all returned merchandise. Returned merchandise will be shipped with return freight charges billed back to Supplier. Returns are F.O.B. Purchaser.

##### SUPPLIER OPTION #1: SUPPLIER WANTS RETURNED MERCHANDISE SENT TO THEM:

     A. Returned merchandise will be sent to Supplier direct from each store.

Permanent return authorization #: \_\_\_\_\_ if required for shipment. If automatic return is not possible, a toll free number should be provided or Supplier must accept Purchaser's collect calls to secure return authorization over the phone.

Phone: \_\_\_\_\_ Extension #: \_\_\_\_\_ Contact: \_\_\_\_\_

     B. Returned merchandise will be sent from store locations to the Return Center and sent to Supplier.

Permanent return authorization #: \_\_\_\_\_ if required for shipment. If automatic return is not possible, a toll free number must be provided or Supplier must provide a fax number and a contact name.

Phone: \_\_\_\_\_ Extension #: \_\_\_\_\_ Contact: \_\_\_\_\_

Permanent return authorization #: \_\_\_\_\_

RETURN SHIPPING ADDRESS: Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Special Instructions:

##### ☒ SUPPLIER OPTION #2: SUPPLIER DOES NOT WANT RETURNED MERCHANDISE SENT TO THEM.

☒ A. Returned merchandise must be disposed of by the individual store; OR

     B. Returned merchandise will be sent from store locations to the Return Center for disposal. [Choose one of the following three.]

         i. Return Center may dispose of returned merchandise through salvage outlets or recycling operations, without accounting for the proceeds of such disposal.

         ii. Return Center must destroy returned merchandise. (Supplier may be charged for any additional costs of destruction.)

         iii. Return Center may donate returned merchandise to charity.

Special Instructions:

##### SUPPLIER OPTION #3: CUSTOMER SATISFACTION MERCHANDISE ALLOWANCE:

Supplier will allow the Customer Satisfaction Merchandise Allowance stated in this agreement. The percentage must be adequate to cover all costs associated with returned merchandise, including but not limited to defective/returned merchandise and handling costs, or additional claims will be filed by the Return Center at our fiscal year end.

     A. Return Center may dispose of returned merchandise through salvage outlets or recycling operations, without accounting for the proceeds of such disposal;

     B. Return Center must destroy returned merchandise. (Supplier may incur additional handling charges to cover costs of destruction.)

     C. Returned merchandise will be sent from store locations to the Return Center and sent to Supplier. If Supplier requests the returned merchandise be sent to them, in addition to the Customer Satisfaction Allowance, the merchandise will be shipped with return freight charges billed back to Supplier; OR

     D. Return Center may donate Return Merchandise to charity.

Permanent return authorization #: \_\_\_\_\_

RETURN SHIPPING ADDRESS: Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Special Instructions:

In electing SUPPLIER OPTION 2.B.iii. or SUPPLIER OPTION 3.D. above, Supplier acknowledges and agrees that not all returned merchandise is suitable for donation. If the returned merchandise is deemed by Company to be unsuitable for donation, Supplier agrees that Company may either (i) destroy such returned merchandise (and Supplier may be charged for any additional costs of destruction) or (ii) dispose of such returned merchandise through recycling operations, without accounting for the proceeds of such disposal. Provided however, Company agrees to retain documentation of returned merchandise for a period of one (1) year after the date on such documentation. Supplier shall have the right, upon reasonable prior notice to Company, to examine and make copies of such documentation related to Supplier's returned merchandise. Supplier shall be responsible for any and all expenses related to the examination or copies of such records.

#### SHIPPING INSTRUCTIONS

Supplier will ship all merchandise in accordance with the then current Shipping and Routing Instructions, Wal-Mart Stores, Inc. (the "Routing Instructions"). Supplier acknowledges it has received a copy of the Routing Instructions. The current Routing Instructions, as may be reasonably amended by Company from time to time, shall be available on Retail Link. Each purchase order will show a routing, which is determined by Company's Traffic Department. Supplier is liable for the excess transportation cost if the designated routing is not followed. If Supplier has a question concerning the routing selected, Supplier must call Company's Traffic Department before

releasing the shipment at the following number: (479) 273-6359.

| SHIPPING POINT | SHIPPING STATE |
|----------------|----------------|
| MOUNT ORAB     | OH             |

#### AMENDMENT TO SUPPLIER AGREEMENT

This Amendment is to the Supplier Agreement dated // between WAL-MART with its corporate offices at 702 SW 8th St., Bentonville, AR 72716 (hereinafter "Company") and BLITZ USA with its corporate offices at 404 26TH AVENUE NW (hereinafter "Supplier").

This Amendment shall be fully incorporated into the Supplier Agreement and any conflict between the Supplier Agreement and this Amendment shall be resolved in favor of this Amendment. Subsequent modifications, amendments, or addenda shall not change or affect this Amendment in any way unless this Amendment is specifically referenced therein and executed by Supplier and Company.

Pursuant to the foregoing, Company and Supplier specifically agree to the following changes to the Agreement:

Except as modified by this Amendment or by any other written agreement between the parties executed after the date of this Amendment, the sale and purchase of merchandise or goods by the parties will be controlled by the terms of the Supplier Agreement. This Amendment and the Supplier Agreement constitute the entire agreement between the parties with respect to its subject matter and no modification, change or alteration shall be effective unless in writing and executed by both parties.

VonMoss, Sandy

Supplier

Underwood, Ryan

Buyer

Peterson, Ryan

Divisional Merchandise  
Manager

Moore, Mike

General Merchandise  
Manager



## **EXHIBIT F**

## **EXHIBIT F**

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG )

CASE NO.: 2009-CP-38-1257

Chad Funchess, )

Plaintiff, )

v. )

Blitz, U.S.A., Inc., )

and )

Palmetto Distributors of Orangeburg, )  
LLC, )

and )

Express Lane, LLC, )

and )

Joseph E. Carroll, )

and )

Foley's Inc., )

Defendants. )

ANSWER OF DEFENDANTS  
PALMETTO DISTRIBUTORS OF  
ORANGEBURG, LLC AND  
EXPRESS LANE, LLC

(Jury Trial Demanded)

The Defendants, Palmetto Distributors of Orangeburg, LLC, (hereinafter referred to as "Palmetto") and Express Lane, LLC, (hereinafter referred to as "Express"), answering the Amended Complaint of the Plaintiff, allege and say as follows:

**FOR A FIRST DEFENSE**

1. That each and every allegation of the Amended Complaint is denied unless hereinafter admitted, qualified, or explained.

2. Defendants admit the allegations of paragraph 1.

Exhibit J

3. Upon information and belief, Defendants admit the allegations of paragraph 2.

4. Defendants admit the allegations of paragraph 3 and 4.

5. Upon information and belief, Defendants admit the allegations of paragraphs 5 and 6.

6. Defendants admit the allegations of paragraphs 7, 8, 9, and 10.

7. Defendants admit the allegations of paragraphs 11, 12, 13, 14, and 15.

8. Defendants admit the allegations of paragraph 16.

9. Defendants deny the allegations of paragraphs 17, 18, and 19 and demand strict proof thereof.

**FOR A SECOND DEFENSE**

10. Defendants reallege and incorporate each and every allegation of the first 9 paragraphs as if fully set forth and repeated verbatim herein.

11. The allegations of paragraphs 21-26 do not apply to these Defendants and therefore no response is required.

**FOR A THIRD DEFENSE**

12. Defendants reallege and incorporate each and every allegation of the first 11 paragraphs as if fully set forth and repeated verbatim herein.

13. The allegations of paragraphs 27-31 do not apply to these Defendants and therefore no response is required.

**FOR A FOURTH DEFENSE**

14. Defendants reallege and incorporate each and every allegation of the first 13 paragraphs as if fully set forth and repeated verbatim herein.

15. The allegations of paragraphs 32-34 do not apply to these Defendants and therefore no response is required.

**FOR A FIFTH DEFENSE**

16. Defendants reallege and incorporate each and every allegation of the first 15 paragraphs as if fully set forth and repeated verbatim herein.

17. The allegations of paragraph 36 are a statement of law which do not require a response and are therefore denied.

18. The Defendants deny the allegations of paragraphs 37-43 and demand strict proof thereof.

**FOR A SIXTH DEFENSE**

19. Defendants reallege and incorporate each and every allegation of the first 18 paragraphs as if fully set forth and repeated verbatim herein.

20. The allegations of paragraph 44 do not require a response and are therefore denied.

21. The Defendants deny the allegations of paragraphs 45-48 and demand strict proof thereof.

**FOR A SEVENTH DEFENSE**

22. Defendants reallege and incorporate each and every allegation of the first 21 paragraphs as if fully set forth and repeated verbatim herein.

23. The allegations of paragraph 49 do not require a response and are therefore denied.

24. The allegations of paragraph 50 are a statement of law which do not require a response and are therefore denied.

25. The Defendants deny the allegations of paragraph 51.

**FOR AN EIGHTH DEFENSE**

26. Defendants reallege and incorporate each and every allegation of the first 25 paragraphs as if fully set forth and repeated verbatim herein.

27. The allegations of paragraph 52 do not require a response and are therefore denied.

28. The Defendants deny the allegations of paragraphs 53-56 and demand strict proof thereof.

**FOR A NINTH AND AFFIRMATIVE DEFENSE**  
**(Sole Negligence)**

29. Defendants reallege and incorporate each and every allegation of the first 28 paragraphs as if fully set forth and repeated verbatim herein.

30. Any injuries suffered by the Plaintiff were directly and proximately caused by the sole negligence of Defendant, Blitz U.S.A., Inc., and Defendants assert the sole negligence of Defendant Blitz U.S.A., Inc., as a complete bar to Plaintiff's recovery versus these Defendants.

**FOR A TENTH AND AFFIRMATIVE DEFENSE**  
**(Contributory Negligence)**

31. Defendants reallege and incorporate each and every allegation of the first 30 paragraphs as if fully set forth and repeated verbatim herein.

32. Any injuries suffered by the Plaintiff were the direct and proximate result of the contributory negligence of the Plaintiff. Defendant asserts Plaintiff's contributory negligence as a complete bar to his recovery versus these Defendants.

**FOR A ELEVENTH AND AFFIRMATIVE DEFENSE**  
**(Assumption of the Risk)**

33. Defendants reallege and incorporate each and every allegation of the first 32 paragraphs as if fully set forth and repeated verbatim herein.

34. Any injuries suffered by the Plaintiff were the direct and proximate result of Plaintiff assuming the risk of the activity in which Plaintiff was engaged at the time of his alleged injury. Defendants assert assumption of the risk by the Plaintiff as a complete bar to Plaintiff's recovery versus these Defendants.

**FOR A TWELFTH AND AFFIRMATIVE DEFENSE**  
**(Comparative Negligence)**

35. Defendants reallege and incorporate each and every allegation of the first 33 paragraphs as if fully set forth and repeated verbatim herein.

36. If these Defendants are found to have contributed to Plaintiff's injuries, which they expressly deny, these Defendants would assert the doctrine of comparative negligence as to Plaintiff and all other Defendants.

**FOR A THIRTEENTH AND AFFIRMATIVE DEFENSE**  
**(Equitable Indemnity)**

37. Defendants reallege and incorporate each and every allegation of the first 36 paragraphs as if fully set forth and repeated verbatim herein.

38. These Defendants would assert that any injuries suffered by the Plaintiff, were caused by the acts and omissions of other Defendants. These Defendants would assert the doctrine of equitable indemnity as to the other Defendants in order to recover any damages, attorneys' fees, and costs awarded in this action.


**FOR A FOURTEENTH AND AFFIRMATIVE DEFENSE**

39. Defendants reallege and incorporate each and every allegation of the first 38 paragraphs as if fully set forth and repeated verbatim herein.

40. These Defendants assert that the investigation and discovery in this case has recently begun and reserve the right to amend this Answer and assert any and all defenses, including affirmative defenses, counterclaims, cross-claims, or claims for affirmative relief against other parties, which are applicable under the facts presented or discovered.

WHEREFORE, having fully answered the Amended Complaint of the Plaintiff, these Defendants pray that the same be dismissed, with the costs of this action assessed to the Plaintiff, and for such other and further relief as this Honorable Court deems necessary and proper.

Respectfully submitted,



Robert D. Robbins  
Robert D. Robbins Attorney at Law, LLC  
110 N. Main Street  
Summerville, SC 29483  
Phone: (843) 285-7100  
Facsimile: (843) 285-7199  
**Attorney for Palmetto Distributors of  
Orangeburg, LLC and Express Lane, LLC**

Summerville, South Carolina

September 1, 2009



|                                           |   |                              |
|-------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                   | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF ORANGEBURG                      | ) | CASE NO.: 2009-CP-38-1257    |
| Chad Funchess,                            | ) |                              |
| Plaintiff,                                | ) |                              |
| v.                                        | ) |                              |
| Blitz, U.S.A., Inc.,                      | ) |                              |
| and                                       | ) |                              |
| Palmetto Distributors of Orangeburg, LLC, | ) | CERTIFICATE OF SERVICE       |
| and                                       | ) |                              |
| Express Lane, LLC,                        | ) |                              |
| and                                       | ) |                              |
| Joseph E. Carroll,                        | ) |                              |
| and                                       | ) |                              |
| Foley's Inc.,                             | ) |                              |
| Defendants.                               | ) |                              |

A copy of the Answer of Defendants Palmetto Distributors of Orangeburg, LLC and Express Lane, LLC to the Amended Complaint in the above captioned matter was served on the Attorney for the Plaintiff on September 1, 2009. The Answer was served via U.S. Mail to the address below:

Terry Richardson, Esquire  
Richardson Patrick Westbrook & Brickman, LLC  
PO Box 1368  
Barnwell, SC 29812

Rachael A. Soto  
Rachael A. Soto  
Legal Assistant to Robert D. Robbins, Esquire

September 1, 2009