



FIXTURE – TERMS & CONDITIONS
Materials & Goods

1. **BINDING EFFECT; ACCEPTANCE.** This purchase order and all subsequent purchase orders delivered by Supplier to The Pep Boys – Manny, Moe & Jack, and its affiliates, successors and assigns (“Pep Boys”) (each “PO”), shall be governed by these terms and conditions, unless otherwise agreed to by an officer of Pep Boys in writing. Each PO constitutes an offer by Pep Boys to Supplier, and shall become a binding contract when accepted by Supplier. Each PO is issued subject to Supplier's acceptance of all of these terms and conditions and may be accepted only upon and subject to all such terms and conditions. No change of any kind to these terms and conditions which is made by Supplier on the face of any PO or otherwise in connection with any PO, shall be binding upon Pep Boys, or shall be deemed to modify or otherwise affect any of these terms and conditions, unless such change is accepted in writing by an officer of Pep Boys.

2. **SHIPPING AND PACKAGING; RISK OF LOSS.** Unless otherwise provided in the PO, all material and goods indicated in the PO shall be delivered F.O.B. Pep Boys’ destination, with Supplier responsible for all freight, shipping and insurance charges. All items shall be packed by Supplier in suitable containers for protection in shipment and storage. Supplier shall bear all risks of loss in delivery of all material and goods to the destination designated by Pep Boys, regardless of whether Pep Boys or Supplier pays freight charges and regardless of the specific shipping terms.

3. **DELIVERY; DELAYS.** Supplier shall make deliveries to fulfill requirements of Pep Boys in accordance with schedules issued to Supplier by Pep Boys, or at dates indicated in the PO. Time is of the essence with respect to Supplier’s fulfillment of the PO. If the material or goods are not delivered within the applicable time period, Pep Boys reserves the right, without liability and in addition to all of its other rights and remedies at law or in equity, to cancel the PO and to purchase substitute material or goods from Supplier or a third party, with Supplier being responsible for all costs of cover.

4. **INSPECTION.** All material and goods ordered shall be subject to inspection and acceptance at destination by Pep Boys. Pep Boys reserves the right to reject and hold, at Supplier’s expense and subject to Supplier’s disposal, all material and goods not conforming to all applicable drawings, specifications, and samples.

5. **INVOICES; PAYMENT; SET-OFF.** All invoices from Supplier to Pep Boys shall specify as separate line items: (a) the prices for the material or goods; (b) all applicable taxes; (c) all applicable insurance costs and charges; (d) all applicable transportation costs and charges; and (e) any other charges. Unless otherwise provided in the PO, payment shall be made to Supplier within 60 days following delivery of the entire PO or receipt of Supplier’s invoices therefore, whichever is later. Pep Boys shall be entitled to set-off any amounts owing from Supplier to Pep Boys against any amounts payable by Pep Boys to Supplier.

6. **PRICES.** The prices herein stated in the PO are firm and not subject to adjustment upwards or other modifications.

7. **GENERAL WARRANTY.** Supplier represents and warrants that all of the goods and material furnished under this PO shall be merchantable and fit for purposes of intended use, free from defects in material, workmanship and design, and shall conform to all applicable specifications, drawings and samples. Such representations and warranties shall be in addition to any standard warranty given to Pep Boys by Supplier. Such representations and warranties shall remain in effect as to each and all of the material and goods furnished hereunder for a period of one year after it is applied to a use for which it was intended. The foregoing period shall be deemed to be extended for such greater period of time as may be specified in Supplier’s standard warranty or service guarantee. Supplier shall furnish to Pep Boys copies of Supplier’s standard warranty and service guarantee applicable to the items covered by this PO. Supplier represents and warrants that all goods and material shall comply with all applicable federal, state and local laws and regulations and that all electrical goods shall bear the approval of the Underwriters Laboratories.

8. **TITLE; PATENT, COPYRIGHT AND TRADEMARK PROTECTION.** Supplier represents and warrants that Supplier has good title to the material and goods, free and clear of encumbrances of any kind. Supplier further represents and warrants that the design and/or use of any or all goods and material delivered hereunder shall not infringe any patents, trademarks, copyrights or any other proprietary rights. Supplier shall indemnify and hold Pep Boys harmless from any claim, liability or expense (including reasonable attorneys’ fees) incurred as the result of any such infringement.

- (a) **Ownership of Work:** Any custom material, product or fixture created by Supplier at the request of Pep Boys for Pep Boys’ use under Agreement (including but not limited to drawings, sketches, blueprints, diagrams, specifications or functional descriptions) (individually, a “Custom Work”) shall be owned solely by Pep Boys.

9. **INSURANCE.** All materials, tooling, models, patterns, drawings and other personal property belonging to Pep Boys or furnished by Pep Boys to Supplier shall be held by Supplier at its risk from loss or damage from all hazards. If Supplier is required to enter premises owned, leased, occupied or under the control of Pep Boys during the delivery or installation of

material or goods furnished by Supplier, Supplier agrees to indemnify and hold Pep Boys and its officers, employees and agents harmless, from any claim, liability or expense (including reasonable attorneys' fees) arising as a result of the delivery and/or installation of material or goods by Supplier or its employees, contractors or subcontractors. Supplier shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and shall maintain proper workers' compensation insurance covering all employees, contractors and subcontractors engaged in such delivery or installation.

10. INDEMNIFICATION. Supplier agrees to indemnify and hold Pep Boys and its parent and affiliates and their respective officers, employees and agents harmless from any claims, liabilities or expenses (including reasonable attorney's fees) arising out of or as a result of (i) product defect or malfunction or (ii) the negligence or willful misconduct of Supplier or its employees, agents or subcontractors.

11 ASSIGNMENT. Supplier may not assign this PO or any obligations hereunder without the prior written consent of Pep Boys.

12. FORCE MAJEURE. The time for performance by Pep Boys or Supplier of any term or provision of the PO shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, unavailability of material or labor, restrictions by governmental authorities or any other cause (except for financial condition or lack of funds) not within the reasonable control of Pep Boys or Supplier, as the case may be.

13. VENDOR COMPLIANCE. Seller agrees to meet and/or exceed the established criteria included in the Buyer Transport and Shipping Manual and the Vendor Compliance Manual that are published on the website located at http://info.pepboys.com/schain/materials_and_goods_terms_and_conditions.htm Seller's commencement of work under this Purchase Order constitutes Seller's acceptance of these terms and conditions.

14. GENERAL PROVISIONS. Supplier shall not disclose any details connected with the PO to any third party, except as may be required to ensure performance, without first obtaining the written consent of Pep Boys. The failure of Pep Boys to insist upon the strict performance by Supplier of any of the terms and conditions of the PO shall not be deemed a waiver of any such term or condition. The PO (including these terms and conditions) constitutes the entire agreement between Supplier and Pep Boys with respect to the sale and purchase of the material and goods described or identified herein. If any provision of these terms and conditions are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall nonetheless be binding and enforceable. All matters relating to or arising out of this PO (whether sounding in contract, tort or otherwise) will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. SUPPLIER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OVER ANY SUCH DISPUTE.



FIXTURE – TERMS AND CONDITINS
Materials, Goods & Services

1. **BINDING EFFECT; ACCEPTANCE.** This purchase order and all subsequent purchase orders delivered by Supplier to The Pep Boys – Manny, Moe & Jack, and its affiliates, successors and assigns (“Pep Boys”) (each, “PO”), shall be governed by these terms and conditions, unless otherwise agreed to by an officer of Pep Boys in writing. Each PO constitutes an offer by Pep Boys to Supplier, and shall become a binding contract when accepted by Supplier. Each PO is issued subject to Supplier’s acceptance of all of these terms and conditions and may be accepted only upon and subject to all such terms and conditions. No change of any kind to these terms and conditions which is made by Supplier on the face of any PO or otherwise in connection with any PO, shall be binding upon Pep Boys, or shall be deemed to modify or otherwise affect any of these terms and conditions, unless such change is accepted in writing by an officer of Pep Boys.
2. **WORK; COMMENCEMENT AND COMPLETION.** In the event Supplier installs any of its fixtures at a Pep Boys’ locations, Supplier shall perform, and furnish all requisite materials, equipment, tools and labor for the work described in the PO (hereinafter called the “Work”) and pay for all necessary permits and approvals for the Work. Supplier shall commence the Work on or before the commencement date set forth in the PO and shall complete the Work on or before the completion date set forth in the PO and/or in accordance with the completion schedule set forth in the PO.
3. **SHIPPING AND PACKAGING; RISK OF LOSS.** Unless otherwise provided in the PO, all material and goods indicated in the PO shall be delivered F.O.B. Pep Boys’ destination, with Supplier responsible for all freight, shipping and insurance charges. All items shall be packed by Supplier in suitable containers for protection in shipment and storage. Supplier shall bear all risks of loss in delivery of all material and goods to the destination designated by Pep Boys, regardless of whether Pep Boys or Supplier pays freight charges and regardless of the specific shipping terms.
4. **DELIVERY; DELAYS.** Supplier shall make deliveries to fulfill requirements of Pep Boys in accordance with schedules issued to Supplier by Pep Boys, or at dates indicated in the PO. Time is of the essence with respect to Supplier’s fulfillment of the PO and its performance of all obligations under the PO. If the material or goods are not delivered within the applicable time period or the Work completed with the applicable time period, Pep Boys reserves the right, without liability and in addition to all of its other rights and remedies at law or in equity, to cancel the PO and to purchase substitute material or goods or contract for substitute Work from Supplier or a third party, with Supplier being responsible for all costs of cover.
5. **INSPECTION/ACCEPTANCE; DEFECTS**
 - a. All material and goods ordered shall be subject to inspection and acceptance at destination by Pep Boys. Pep Boys reserves the right to reject and hold, at Supplier’s expense and subject to Supplier’s disposal, all material and goods not conforming to all applicable drawings, specifications, and samples.
 - b. In the event Supplier All of the Work shall be subject to Pep Boys’ acceptance and approval. Pep Boys may appoint engineers and inspectors to determine whether the Work is being or has been done in strict accordance with the PO and these terms and conditions. Any question arising in connection with the Work, not addressed in the PO, shall be promptly referred to Pep Boys for advice and written decision. All engineers and representatives appointed by Pep Boys shall at all times have access to the Work. Supplier assumes all risk of loss or damage to the Work prior to final acceptance thereof. If the Work when completed is approved by Pep Boys, Pep Boys shall, upon Supplier’s written request, indicate its final acceptance of the Work by written notice thereof to Supplier. No certificate of payment issued or payment made to Supplier and no partial or entire use of the Work by Pep Boys shall be deemed a final acceptance. Final acceptance by Pep Boys shall not in any way release Supplier from any unperformed obligation then existing or subsequently discovered. Supplier shall remedy at its own expense any defects in material, workmanship or design, and any defects in the Work due to Supplier’s failure to use a normal degree of skill and care in carrying out the Work which may appear within a period of one year from the date of final acceptance of the Work. Supplier agrees to pay for any and all claims, losses and damages resulting therefrom.
 - c. **CHANGES.** Pep Boys reserves the right to make changes in the Work, including alterations, reductions therein or additions thereto. Upon receipt by Supplier of Pep Boys’ written notification of a contemplated change, Supplier shall (a) if requested by Pep Boys, provide a written estimate of the increase or decrease in cost due to the contemplated change and (b) notify Pep Boys in writing if the contemplated change will affect Supplier’s ability to meet the completion date or schedule. If Pep Boys so instructs in writing, Supplier shall suspend performance on that portion of the Work affected by a contemplated change, pending Pep Boys’ decision on whether to proceed with the change. If Pep Boys elects to make the change, Pep Boys shall issue a written change PO for such change and Supplier shall not perform or install such change until such written change PO has been issued.

6. INVOICES; PAYMENT; SET-OFF. All invoices from Supplier to Pep Boys shall specify as separate line items: (a) the prices for the material, goods and services; (b) all applicable taxes; (c) all applicable insurance costs and charges; (d) all applicable transportation costs and charges; and (e) any other charges. Except as otherwise provided herein, all prices are firm and not subject to increase or upward adjustment. Unless otherwise provided in the PO, payment shall be made to Supplier within 60 days following delivery of the entire PO, final acceptance of Work or receipt of Supplier's invoices therefore, whichever is later. Pep Boys shall be entitled to set-off any amounts owing from Supplier to Pep Boys against any amounts payable by Pep Boys to Supplier.

In addition, no final payment under the PO shall become due until Supplier delivers to Pep Boys a complete release, in a form satisfactory to Pep Boys, of all claims or liens arising out of the PO, executed by all parties who, in Pep Boys' opinion, are or may become lienors or claimants against the Work, Supplier or Pep Boys. If Supplier fails to promptly obtain such releases after demand by Pep Boys, then Pep Boys shall have the right in its sole discretion to settle or otherwise provide for the discharge of any and all such liens, claims and liabilities, and Supplier shall pay Pep Boys all sums necessary to discharge the same, including costs, reasonable attorney's fees and expenses. No partial payment of any invoices will be made by Pep Boys to Supplier. Pep Boys shall be entitled to set-off any amounts owing from Supplier to Pep Boys against any amounts payable by Pep Boys to Supplier.

7. GENERAL WARRANTY. Supplier represents and warrants that (a) all of the Work shall be done in a good and workerlike manner by skilled workers, in accordance with sound construction or other applicable practices, and shall conform to any details, specifications or requirements furnished to Supplier, (b) all of the goods and material (including the design thereof) furnished under this PO shall be merchantable and fit for purposes of intended use, free from defects in material, workmanship and design, and shall conform to all applicable specifications, drawings and samples. Such representations and warranties shall be in addition to any standard warranty given to Pep Boys by Supplier. Such representations and warranties shall remain in effect as to each and all of the material, goods and items of Work furnished hereunder for a period of one year after it is applied to a use for which it was intended. The foregoing period shall be deemed to be extended for such greater period of time as may be specified in Supplier's standard warranty or service guarantee. Supplier shall furnish to Pep Boys copies of Supplier's standard warranty and service guarantee applicable to the items covered by this PO. Supplier represents and warrants that all goods, material and items of Work shall comply with all applicable federal, state and local laws and regulations and that all electrical goods shall bear the approval of the Underwriters Laboratories.

8. TITLE; PATENT, COPYRIGHT AND TRADEMARK PROTECTION. Supplier represents and warrants that Supplier has good title to the material and goods, free and clear of encumbrances of any kind. Supplier represents and warrants that Supplier has good title to all goods and materials used in or incorporated into the installation and/or performance of the Work. Supplier further represents and warrants that the design and/or use of any or all goods and material and the installation and/or performance of any or all of the Work under the PO, delivered hereunder shall not infringe any patents, trademarks, copyrights or any other proprietary rights. Supplier shall indemnify and hold Pep Boys harmless from any claim, liability or expense (including reasonable attorneys' fees) incurred as the result of any such infringement.

- (a) Ownership of Work: Any custom material, product or fixture created by Supplier at the request of Pep Boys for Pep Boys' use under Agreement (including but not limited to drawings, sketches, blueprints, diagrams, specifications or functional descriptions) (individually, a "Custom Work") shall be owned solely by Pep Boys.

9. INSURANCE. All materials, tooling, models, patterns, drawings and other personal property belonging to Pep Boys or furnished by Pep Boys to Supplier shall be held by Supplier at its risk from loss or damage from all hazards. If Supplier is required to enter premises owned, leased, occupied or under the control of Pep Boys during the delivery or installation of material or goods furnished by Supplier, Supplier agrees to indemnify and hold Pep Boys and its officers, employees and agents harmless, from any claim, liability or expense (including reasonable attorneys' fees) arising as a result of the delivery and/or installation of material or goods by Supplier or its employees, contractors or subcontractors. Supplier shall maintain public liability and property damage insurance in reasonable limits covering the obligations set forth above and shall maintain proper workers' compensation insurance covering all employees, contractors and subcontractors engaged in such delivery or installation.

In the event that Supplier commences Work, Supplier shall provide Pep Boys with certificates of insurance evidencing the existence of the policy coverages and minimum limits of liability set forth below:

<u>Type of Coverage</u>	<u>Minimum Limit of Liability</u>
-Workman's Compensation (including occupation disease coverage)	Statutory
-Employer's Liability	\$500,000.00
-Comprehensive General Liability (including manufacturer's and Supplier's liability; Supplier's protective liability; contractual liability; products and completed operations; elimination of "X", "C", and "U" exclusions when work involves blasting, the possibility of collapse or structural damage; personal injury; and advertising injury)	\$2,000,000.00
-Automobile Liability (including coverage for all owned, hired or non-owned automotive equipment used)	\$1,000,000.00

All policies shall be issued by carriers acceptable to Pep Boys. Each policy for Comprehensive General Liability and Automobile Liability shall name Pep Boys as an additional insured. All certificates of insurance shall provide that the policies may not be canceled or changed without 30 days' prior written notice to Pep Boys. Supplier shall maintain the foregoing insurance coverages, with at least the minimum required limits of liability, in full force and effect until final acceptance of the Work. Pep Boys shall have no obligation to verify or review the coverage, limits or status of any of Supplier's policies of insurance.

10. INDEMNIFICATION. Supplier agrees to indemnify and hold Pep Boys and its parents and affiliates and their respective officers, employees and agents harmless from any claims, liabilities or expenses (including reasonable attorney's fees) arising out of or as a result of (i) product defect or malfunction or (ii) the performance of the Work or the negligence or willful misconduct of Supplier or its employees, agents or subcontractors.

11. ASSIGNMENT. Supplier may not assign this PO or any obligations, including the subcontracting of any part of the Work, hereunder without the prior written consent of Pep Boys. In no case shall any subcontract by Supplier relieve Supplier of any of Supplier's obligations and liabilities under the PO.

12. FORCE MAJEURE. The time for performance by Pep Boys or Supplier of any term or provision of the PO shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, unavailability of material or labor, restrictions by governmental authorities or any other cause (except for financial condition or lack of funds) not within the reasonable control of Pep Boys or Supplier, as the case may be.

13. VENDOR COMPLIANCE. Seller agrees to meet and/or exceed the established criteria included in the Buyer Transport and Shipping Manual and the Vendor Compliance Manual that are published on the website located at http://info.pepboys.com/schain/materials_and_goods_terms_and_conditions.htm Seller's commencement of work under this Purchase Order constitutes Seller's acceptance of these terms and conditions.

14. TERMINATION. Pep Boys may terminate Supplier's Work under the PO in whole or in part at any time by written notice to Supplier. Upon receipt of Pep Boys' notice of termination of the work under the PO, Supplier will, as to the terminated portion of the PO, stop work immediately, notify contractors and subcontractors to stop work and protect property in Supplier's possession in which Pep Boys has or may acquire an interest. Except where such termination is occasioned by a default or delay of Supplier, other than one due to causes beyond Supplier's control (provided, however, that any such cause involving the payment or non-payment of money shall be deemed to be within Supplier's control) and without Supplier's fault or negligence, Supplier may claim reimbursement on forms which Pep Boys will furnish on request, for Supplier's actual costs incurred up to and including the date of termination which are properly allocable or apportionable under recognized accounting practices to the terminated portion of the PO, including liabilities to subcontractors which are so allocable, and acceptable finished units at contract price not previously billed or paid for, but excluding any charge for interest or any materials which Supplier may be able to divert to other POs. Supplier may also claim a reasonable profit (prorated) on the work completed by Supplier prior to such termination, the rate of which shall not exceed the rate of profit applicable to the entire PO.

15. RELATIONSHIP OF PARTIES. Supplier is an independent contractor. Nothing contained herein shall be construed as constituting any other relationship with Pep Boys, nor shall it be construed as creating any relationship whatsoever between Pep Boys and Supplier's employees. Supplier has sole authority and responsibility to employ, discharge and otherwise control its employees, and neither Supplier nor any of its employees are or shall be deemed to be employees of Pep Boys. Supplier agrees to comply with all laws, rules, rulings, regulations, standards, POs and ordinances applicable to it as such employer.

16. GENERAL PROVISIONS. Supplier shall not disclose any details connected with the PO to any third party, except as may be required to ensure performance, without first obtaining the written consent of Pep Boys. The failure of Pep Boys to insist upon the strict performance by Supplier of any of the terms and conditions of the PO shall not be deemed a waiver of any such term or condition. The PO (including these terms and conditions) constitutes the entire agreement between Supplier and Pep Boys with respect to the sale and purchase of the material and goods described or identified herein. If any provision of these terms and conditions are determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall nonetheless be binding and enforceable. All matters relating to or arising out of this PO (whether sounding in contract, tort or otherwise) will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. SUPPLIER HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OVER ANY SUCH DISPUTE.