

**GABE'S**

55 Scott Avenue

Morgantown, WV 26508-8853

Telephone: (304) 292-6965

Fax: (304) 292-3191

**Purchase Order**

Vendor Original

Order Date 2/08/24

**100-0098001459 S2**

Revision: 2

Vendor: 9646

JLA HOME

Attn: DAVID JACKSON

Fax: 678-461-0248

Phone: 770-587-0455

Email: NOTUSED@GABES.NET

Vendor ID: GB9646

Ship To:

Gabe's

Fairmont DC

3 Hoult Rd.

Fairmont, WV 26554

Ship Via		F.O.B.		Terms			
Contact Traffic Dept: traffic@gabes.net		ORIGIN		ROG 30			
Freight		Ship Date		Cancel Date		Contact	
Collect		6/13/24		6/20/24		DAVID JACKSON	
Internal Item # / Item	Ticket SKU	CS PK	Total Qty	Style	Description	Unit Cost	Ext. Cost
9812-9646-1-0-0	885108568.	4	600	GBI30-0035	18X18 HA SHRPA SPIDERWEB	\$4.61	\$2,766.00
9812-9646-2-0-0	885108584.	4	600	GBI30-0038	18X18 HA STRIPE GHOST	\$4.22	\$2,532.00
9812-9646-3-0-0	885108592.	4	600	GBI30-0039	18X18 HA HPY HLWN EMB	\$5.28	\$3,168.00
9812-9646-4-0-0	885108618.	4	600	GBI30-0040	18X18 HA SEQUIN SKULL	\$5.73	\$3,438.00
9812-9646-5-0-0	885108626.	4	600	GBI30-0033	18X18 HA BAT EMBROIDERY	\$4.74	\$2,844.00
9812-9646-6-0-0	885108634.	4	600	GBI30-0034	18X18 HA BOO EMBROIDERY	\$4.74	\$2,844.00
9811-9646-1-0-0	885108642.	4	480	GBI30-0036	14X18 HA SHERPA GHOST	\$4.42	\$2,121.60
9811-9646-2-0-0	885108709.	4	300	GBI30-0037	18X18 HA VELVET SPIDER	\$5.71	\$1,713.00
Total			4,380				\$21,426.60

- All Cartons Must Be Labeled With Item Description, P.O.#, Style # and Color
- Ship Complete, Cancel, B/O
- Prior To Shipping, Must Provide Confirmation of Shipment and Advanced Shipping Notices

All Labels Will Be Intact **MARKOUT**

Merchandise shipped and invoices dated on or after the 20th of the month should be billed to us as of the following month. All 10 day datings begin at date of receipt of the shipment by us.

THIS PURCHASE ORDER IS EXPRESSLY LIMITED TO, AND EXPRESSLY MADE CONDITIONAL ON, SELLER'S ACCEPTANCE OF THE TERMS OF THE ORDER AND THE ATTACHED GABE'S PURCHASE ORDER TERMS AND CONDITIONS. BUYER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.

Acknowledged and Accepted By Seller:

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## **GABE'S PURCHASE ORDER TERMS AND CONDITIONS**

Revised 9/27/2017

1. Vendor warrants that all items ("Goods") listed in this purchase order ("PO") are compliant with all international and U.S. federal, state and local laws, industry standards and best practices (collectively "Laws") applicable to the Goods and that all Goods are new, merchantable and safe for the use (including ingestion) for which they were manufactured and are warranted to be free from defects in materials, workmanship or ingredients which may be harmful to persons or property. Vendor further warrants that the Goods will conform to all sample and PO descriptions and standards as to quality, material(s), workmanship, fit and appearance and will be properly marked and labeled as to country of origin, weight, measure, material(s) and ingredients. Vendor confirms that all necessary tests and measures were performed to ensure compliance with this PO and agrees to immediately notify Gabe's of any circumstance which does or may result in any of the Goods being in violation of any of Vendor's warranties herein.

2. Vendor warrants that all Goods are properly designed, labeled, branded, distributed, priced, tested, advertised and sold in accordance with all Laws applicable to the Goods, including but not limited to federal: child labor laws, Foreign Corrupt Practices Act, Consumer Product Safety Improvement Act, the Wool, Products Labeling Act, Fur Products Labeling Act, Hazardous Substances Labeling Act, Flammable Fabrics Act, Food Drug and Cosmetics Act, the Child Protections and Toy Labeling Act, California's Proposition 65, the Textile Fiber Products and Identification Act, and their state or local equivalents if applicable.

3. Vendor warrants that there are no restrictions that might attach to the sale of the Goods in Gabe's stores that are not expressly disclosed in this PO, and that the Goods and their markings, labels, design and appearance do not infringe any patents, trade dress, trademarks, tradenames, copyrights or other rights of others, and that the resale by Gabe's to any person, with or without any such markings, labels, design or appearance, is not restricted in any manner whatsoever. Vendor further warrants that all Goods bearing any name or trademark of any third party are genuine Goods manufactured with the authority, and in accordance with all applicable quality standards of such third party, and that all Goods are authorized for sale in the U.S. market.

4. From date of PO to five (5) years following acceptance and delivery of the Goods, Vendor agrees within five (5) business days of Gabe's request, to provide test results and other records and documents sufficient to demonstrate Vendor's full compliance with all Laws and warranties to Gabe's satisfaction and shall otherwise cooperate (and ensure cooperation by any manufacturer or prior vendor of the Goods) as reasonably requested by Gabe's.

5. This PO consists of these terms and conditions, any terms on page 1 of the PO, and all requirements contained in the Vendor Routing Guide and all other instructions issued by Gabe's from time to time. This PO constitutes the entire agreement between Gabe's ("Gabe's") and the vendor named on the PO form ("Vendor") with respect to the Goods referenced on the PO. By acceptance of this PO, Vendor acknowledges receipt of, and agrees to comply with, all documents and instructions issued by Gabe's governing Vendor conduct, including but not limited to Gabe's Gift Giving Policy.

6. This PO shall not be valid unless signed by an authorized employee of Gabe's, and in no event shall Gabe's be obligated to pay for any Goods prior to acceptance of the Goods. Any employee, agent or representative taking this PO for Vendor shall be deemed to have full authority to bind Vendor to these Terms and Conditions.

7. Notwithstanding anything to the contrary herein, any acceptance of any offer created by this PO or by conduct of Gabe's, including Gabe's acceptance of, or payment of Goods, is expressly made conditional on Vendor's agreement to, and acceptance of, all Terms and Conditions contained herein. Time is of the essence with respect to all dates established in this PO.

8. If any term(s) of this PO is invalid or unenforceable under any Law, statute, regulation, ordinance, executive order or other rule of law, such term(s) shall be deemed reformed or deleted, as the case may be, but only to the extent necessary to comply with such Law, statute, regulation, ordinance, order or rule, and the remaining provisions of this PO shall remain in full force and effect. The language of this PO shall be construed according to its plain meaning and shall not be construed against the drafting party.

9. Vendor shall have five (5) business days from Vendor's receipt of this PO to give written notice of their rejection to the same or this PO shall be deemed accepted in its entirety by Vendor, and become a binding agreement between Gabe's and Vendor. The PO is the only agreement between Vendor and Gabe's relating to the Goods and can only be waived or amended by a writing signed by an authorized signatory of Gabe's.

10. Receipt by Gabe's of any Goods, irrespective of any contrary provisions contained in any document delivered to, or in any statement made by Vendor to Gabe's upon such receipt, shall not be deemed acceptance of said Goods. Such receipt shall evidence only the time, place and the quantity of cartons/containers received. Title to the Goods and risk of loss or damages shall pass to Gabe's at the F.O.B. point on page 1 of the PO.

11. At Gabe's option, the Goods may be rejected in whole or in part at any time upon Gabe's discovery that all or any portion of the Goods fail to comply with any Laws, the requirements of this PO or any warranty provided herein, or is not shipped in compliance with Gabe's shipping instructions, regardless of whether said or similar Goods have in the past been or may in the future be accepted by Gabe's, and further, Gabe's shall have the right to return any or all of the Goods to Vendor for full credit and/or to be compensated for any and all loss or damages suffered by Gabe's as a result of such violation, and/or such return, including but not limited to Gabe's storage, freight, and handling costs.

12. In the event of rejection, Gabe's may, in its sole discretion, and at Vendor's sole risk and expense, return the Goods to Vendor or destroy the Goods. Gabe's shall, in addition to any and all other rights and remedies provided by applicable law, be entitled to a credit from Vendor for the amount paid by Gabe's for the rejected Goods and the amount of any damages owed to Gabe's as a result of the rejected Goods. Should Gabe's elect to accept all or a portion of the otherwise rejected Goods, Gabe's shall, in addition to any and all other rights and remedies provided by applicable law, be entitled to a credit from Vendor for the amount paid by Gabe's for any of the rejected Goods and for the amount of any damages owing to Gabe's as a result of the rejected Goods.

13. The failure of Gabe's at any time to require performance by Vendor of any provision of this PO shall in no way affect the right to require such performance at any time thereafter, nor shall the waiver of Gabe's of a breach of any provision of this PO constitute a waiver of any succeeding breach of the same or any other provision.

14. In the event the Goods or Vendor fail to comply with the terms and conditions of this PO, no act or omission by Gabe's, including receipt, rejection, acceptance, revocation of acceptance, resale, payment or otherwise, shall operate to bar Gabe's from exercising at any time, any remedies Gabe's may have at law or in equity. All rights are reserved.

15. Notwithstanding anything to the contrary, no act, omission, inspection, failure or refusal to inspect by Gabe's will operate to waive Vendor's warranties herein or implied by law. No modification or waiver of any warranty, express or implied, shall be effective unless agreed to in writing by Gabe's. Vendor agrees to provide Gabe's (and to cause any manufacturer or prior vendor of the Goods to provide Gabe's) any documents or information requested by Gabe's related to production of the Goods.

16. In the event Vendor breaches any of the terms of this PO, or in the event of any bankruptcy proceedings, voluntary or involuntary, insolvency by or against Vendor, including, without limitation, reorganization, arrangement or settlement, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, or in the event any Third-Party Claim is made against Gabe's with respect to the Goods or any other merchandise that may be the subject of any other PO issued to Vendor by Gabe's or any of its Affiliates, Gabe's may cancel this PO without any further liability to Vendor (cancellation shall not affect any rights or remedies Gabe's may have under this PO or applicable law).

17. Whether originating from any rights or obligations under this PO, or under any other contract between Vendor and Gabe's or any of its Affiliates, or by reason of any other legal obligation between Vendor and Gabe's or any of its Affiliates, Gabe's shall have the right to collect from Vendor any amount due to Gabe's or any of its Affiliates (including any amount due for breach of contract or warranty) and in addition, to offset against any amount due to Vendor from Gabe's or any of its Affiliates. The foregoing shall be in addition to any and all remedies Gabe's may have hereunder or otherwise under applicable law.

18. Gabe's shall be entitled to cancel this PO in whole or in part and without any penalty whatsoever, in the event of an unforeseeable force majeure event beyond the reasonable control of Gabe's, which shall include, but not be limited to acts of nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), perils of transportation, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of power sources, vandalism, malicious mischief, governmental regulation or any other event beyond the reasonable control of Gabe's.

19. Vendor agrees to indemnify, defend, save and hold harmless Gabe's and any company or organization controlling, controlled, by or under common control with Gabe's ("Affiliates") from and against any and all loss, judgments, settlements, disbursements, costs of defending (including reasonable attorney's fees) and other expenditures incurred by Gabe's as a result of any claim, action, subpoena, or demand brought or made against Gabe's or any of its Affiliates by any third party, including Gabe's customers, ("Third-Party Claim"), relating to this PO or arising out of, or resulting directly or indirectly from a failure of Vendor, or the Goods, to conform to the terms of any obligation of Vendor or any warranty made by Vendor hereunder, including without limitation, claims based upon or arising from or related to injuries to persons or damage to property caused, or alleged to be caused, by any defects in the Goods.

20. Upon request by Gabe's, Vendor shall assume the defense of any third-party claim, but Gabe's shall have the right to approve any settlement. In the alternative, and in Gabe's sole discretion, Gabe's may retain full control over the defense and settlement of any third-party claim and may require Vendor to cooperate in such defense and settlement, all at Vendor's expense, including counsel fees, and Vendor shall indemnify Gabe's against all loss and expense, including counsel fees and the costs.

21. In the event of an assignment of any rights of Vendor hereunder, to a factor or otherwise, and regardless of any notice to Gabe's, the assignee shall be bound by, and subject to, any defenses which Gabe's may have against Vendor and any agreements made by Gabe's and Vendor regarding the Goods or payment therefor, regardless of the timing of such assignment. Notwithstanding any such assignment, Vendor shall remain bound by all of Vendor's and Vendor's assignee's obligations hereunder and shall retain full liability to Gabe's for any breach of such obligations, whether such breach is committed by Vendor itself or by Vendor's assignee.

22. Any action by Vendor for breach of this PO must be commenced, and Gabe's must be served with process in any such action, within a year of the date of breach. All rights and remedies of Gabe's provided herein shall be cumulative to one another and cumulative to any rights and remedies to which Gabe's is entitled by law. Nothing herein shall exclude or limit any other rights and remedies to which Gabe's is entitled by law.

23. Vendor agrees to keep in the strictest of confidence, all Confidential Information of Gabe's, and to use it only for the narrow purpose of performance and compliance under this PO. For purposes of this PO, "Confidential Information" shall mean all knowledge, information, data or material, relating in any way to the business of Gabe's or an Affiliate, which may be in tangible or intangible form, expressed orally or in writing, in electronic or physical form or in any other form, whether or not marked confidential, disclosed by Gabe's or its Affiliates, including, without limiting the generality of the foregoing: the contents of the PO, trade secrets and other competitively sensitive information and data, training materials, general business operations and practices, new and current business development information and strategies, processes, products, services, and equipment, technical or non-technical data, software, source codes, security measures, compilations, programs, contacts, vendors, methods, techniques, drawings, processes, financial data, financial plans, pricing information, product and marketing plans and lists of actual or potential customers or suppliers. Vendor agrees to treat said Confidential Information with at least the same degree of confidentiality with which it treats its own confidential information, but in no event less than reasonable care. Except as necessary to perform under the PO, Vendor agrees that neither it nor its employees, officers, directors or agents will duplicate, distribute, disclose, convey or in any manner make available any Confidential Information to any third party, without the prior written consent of Gabe's, or to use Confidential Information for any purpose other than for the obligations contemplated by this PO. Vendor shall restrict the disclosure of Confidential Information it receives to its employees, officers or directors who have a reasonable need to know such Confidential Information, and to take reasonable steps to ensure that such persons are aware of and abide by the terms herein. The obligations of Vendor shall not apply to information, including but not limited to, Confidential Information which (i) becomes part of the public domain through no act or omission of the Vendor; (ii) was lawfully disclosed to the Vendor without restriction; (iii) was rightfully in the Vendor's possession prior to disclosure hereunder or pursuant to an Agreement; (iv) is or has been independently developed by the Vendor without use of the Confidential Information; and, (v) is required to be disclosed by operation of law; provided, however, that in the event the Vendor becomes legally compelled to disclose any of the Confidential Information, Vendor will provide the Gabe's with prompt notice thereof so that the Gabe's may seek a protective order or other appropriate remedy. Vendor shall have an obligation of secrecy under this PO for a period of three (3) years from the date that such Confidential Information is disclosed to Vendor. Nothing herein shall be construed as granting to Gabe's or Vendor any right or license under any patents or under any Confidential Information or know-how owned or controlled by Gabe's. Further, nothing herein shall be construed as an agreement or a commitment on the part of either Party to disclose any particular Confidential Information. Each Party agrees that money damages would not be a sufficient remedy for any breach of the confidentiality provisions of this PO and that Gabe's will be entitled to seek equitable relief, including injunction and specific performance, in the event of any breach of the provisions of this PO, in addition to all other remedies available at law or in equity.

24. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY: (A) SUBMIT TO PERSONAL JURISDICTION IN THE STATE OF DELAWARE, U.S.A. FOR ANY ACTION ARISING OUT OF OR IN CONNECTION WITH THIS PO; (B) WAIVE ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE OR COUNTRY TO OBJECT TO JURISDICTION WITHIN THE STATE OF DELAWARE, U.S.A.; (C) AGREE THAT FOR ANY CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THIS PO, VENUE IS SOLELY PROPER IN COURTS HAVING JURISDICTION IN CASTLE COUNTY, DELAWARE, U.S.A.; AND (D) AGREE THAT THIS PO IN ALL RESPECTS BE CONSTRUED AS A CONTRACT EXECUTED IN THE STATE OF DELAWARE, U.S.A. AND THAT THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ITS CONFLICTS OF LAWS PROVISIONS, SHALL GOVERN THIS PO AND ALL ACTIONS BROUGHT UNDER THIS PO.

25. IN NO EVENT WILL GABE'S OR ITS AFFILIATES BE LIABLE TO VENDOR, ASSIGNS OR ITS AFFILIATES FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF REVENUE, OR ANY DAMAGES FROM ANY PRODUCT, PROGRAM, OR SERVICE, WHETHER BASED ON TORT, NEGLIGENCE, CONTRACT, STRICT LIABILITY, OR OTHERWISE ARISING FROM OR RELATING TO THIS PO, EVEN IF GABE'S OR ANY OTHER PERSON HAS BEEN ADVISED OR SHOULD KNOW OF THE POSSIBILITY OF SUCH DAMAGES.

26. Vendor agrees to maintain sufficient insurance for all Vendor obligations and liability hereunder, including, but not limited to general liability coverage with an endorsement for products liability either naming Gabe's as additional insured, or broad form vendor's coverage. As it relates to the insurance coverage obligation hereunder, no action or inaction on the part of Gabe's shall constitute a waiver of any of Gabe's rights or Vendor obligations hereunder. Gabe's shall constitute a waiver of any of Gabe's rights or Vendor obligations hereunder.