

## STANDARD DROP SHIP TERMS AND CONDITIONS

Subject to the mutual execution of a Drop Ship Agreement, the Vendor agrees to participate in the Company's Drop Ship program and such participation is governed by these Standard Drop Ship Terms and Conditions ("Drop Ship T&Cs"), which may be amended from time to time. Vendor agrees that its participation in the Drop Ship Program signifies Vendor's agreement with these Drop Ship T&Cs and the Drop Ship Agreement (collectively, the "Agreement"). Terms used but not defined herein shall have the meanings given to such terms in the Drop Ship Agreement.

**1. Sale Site.** The "Sale Site" is defined as any Internet or mobile web site or mobile application owned, operated or controlled by the Company, its Affiliates or a Business Associate. Vendor hereby authorizes the Company to offer and sell the Products to Customers by means of the Sale Site. "Business Associate" means an entity (including an Affiliate) with which the Company has a contractual co-branding, hosting or sales relationship pursuant to which the Company operates, hosts or contributes to a third-party web site directed in whole or in part to the retail sale of merchandise. "Affiliate" means an entity controlling, controlled by or under common control with another entity.

**2. Vendor Content.** Vendor will produce and provide to the Company at Vendor's sole expense digital images, technical specifications, textual descriptions for and other information about the Products (including any applicable warnings) that comply with the requirements of the Agreement ("Vendor Content"). The Company will have the right to approve or reject any Vendor Content in its reasonable discretion. With the prior consent of Vendor, the Company may re-shoot or modify the Vendor Content to satisfy the Company's reasonable marketing requirements. Vendor assumes sole responsibility for the accuracy of the Vendor Content including without limitation, descriptive claims, warranties and guarantees. Vendor agrees that the Vendor Content shall not contain or link to any material that is obscene, threatening, defamatory, unfair, misleading, deceptive, malicious, or which infringes on or violates any applicable law or regulation or any proprietary, contract, moral, privacy or other third party right, or which otherwise exposes itself and/or the Company to civil or criminal liability.

**3. Account.** The Account (as defined in the Drop Ship Agreement) is the Confidential Information of the Company. In the event of any breach of by Vendor related to the Account, the cure periods set forth in Section 16.1(b) hereof shall not apply and the Company may, at its option, immediately terminate the Agreement and set off any amounts that may be due to Vendor in addition to any other legal or equitable remedies available to the Company. Vendor shall have no right to charge the Company any additional amount for a Product or its fulfillment other than the Fulfillment Price. The Company has no obligation to accept or offer any promotions or incentives offered by Vendor to its customers.

**4. Customer Information.** (i) The Company shall exclusively own the Customers and all Customer Information; and (ii) other than in connection with the transactions contemplated by this Agreement, Vendor shall not, directly or indirectly, use or disclose the Customer Information, including, but not limited to: (i) selling or renting any Customer Information; (ii) sending any written communications, including emails, to any Customers, or otherwise soliciting any Customers, (iii) marketing to Customers, and/or (iv) making any use of the Customer Information, either individually or in an aggregate form. "Customer Information" means all user and Customer information (including, but not limited to, name, e-mail address, billing address, shipping address, telephone number, credit card number, items ordered and shipped, order and ship dates and shipping information) obtained in connection with sales of Products to Customers through the Sale Site.

**5. Returns.** Vendor shall comply with the Company's return policy as stated on the Sale Site (the "Return Policy") and shall accept at the Authorized Location or at a location as mutually agreed to by the parties, all Products returned by Customers in accordance with the Return Policy. If the parties agree that the Event shall be a "final sale" Event subject to applicable law and the terms of this Agreement, Vendor will only be required to accept applicable returns due to Damaged or Defective Products as set forth in the Drop Ship Agreement. Notwithstanding the foregoing and, if applicable, in no event shall Vendor accept any returns from a Customer at its physical retail (or outlet) locations for any Product sold through a Sale Site. Vendor shall be responsible for total returns processing including, but not limited to, receipt of the package, routing of correspondence to the Company's customer service, Product inspection and restocking and liquidation of defective or damaged items at Vendor's expense, all of which shall be undertaken without penalty charges. Vendor shall notify the Company through electronic means, fax, mail or other agreed upon means, within one (1) business day, of the non-delivery or the return to Vendor of any Product or the pickup of the Product from the Customer by Vendor or its agent.

**6. Customer Charges.** The Company shall have the right to charge the Customer separately for shipping, handling, expedited service and any other item(s), in its sole discretion, and shall have no obligation to remit or share any portion of such amounts with Vendor. The Company shall be the sole point of contact with the Customer with respect to payment and collections, and Vendor shall not invoice, bill or charge any Customer any amount in respect of the Products (including in connection with the return thereof).

**7. Control of Sale Site.** Notwithstanding any other provision of the Agreement, the Company will have the right to determine the content, appearance, functionality and all other aspects of the Sale Site in its sole discretion. Without limiting the generality of the foregoing, notwithstanding any other provision of the Agreement, the Company will have the right to re-design, modify and alter the organization, structure, “look and feel”, navigation, appearance, functionality and other elements of all or a part of the Sale Site and any aspect, portion or feature thereof, other than the Vendor Content.

**8. Product Recalls.** In the event the Consumer Product Safety Commission or other federal, state or local agency (the “Commission”) issues an order pursuant to any consumer protection law (hereinafter referred to as the “Act”) requiring either the Company or Vendor to recall, replace, repair or make refunds with respect to all or part of any Product (a “Recall”) or where Vendor determines that a Recall is warranted prior to or without regard to any proceeding or determination by the Commission, Vendor shall do so at its expense and assume all costs (including without limitation, reimbursements to the Company for its out-of-pocket expenses) and such Recall shall be effectuated in a manner determined by Vendor with the Company’s consent (which shall not be unreasonably withheld). For purposes of this Section, out-of-pocket expenses shall include any expense incurred by the Company relating to the Recall. In any event, Vendor shall accept return of any Product involved in a Recall and Vendor shall refund to the Company all monies paid for said Product. In no event shall Vendor treat the Company less favorably than any other customer in the event of a Recall or potential Recall. Nothing contained in this Section shall prevent the Company from taking any actions as may be required of it under the Act and Vendor shall pay the Company all costs and expenses incurred by the Company in so doing. Vendor will promptly notify the Company of any recalls or threatened recalls of any Product.

**9. Confidential Information.** “Confidential Information” means confidential or proprietary information concerning the business, products or customers of a party. Without limiting the generality of the foregoing, Confidential Information of the Company shall include the name and dates of the Event and all information relating to Customers’ ordering and purchase of Products hereunder, including the Order Information, Customer Information, Product return information, Customer satisfaction information, quantity and nature of Customers, orders and Products sold, shipped and returned, and all information provided directly by Customers to Vendor in connection with the ordering or purchase of Products through the Sale Site.

(a) Neither the Company nor Vendor shall use any Confidential Information of the other party that it may acquire except in connection with its performance of activities under the Agreement. Neither party shall disclose or release any of the disclosing party’s Confidential Information except to its contractors, consultants and agents who are acting on such party’s behalf and are bound by confidentiality restrictions as to such Confidential Information at least as strict as those set forth herein. In addition, each party shall take any and all necessary precautions to prevent any such disclosure by its respective employees, officers, directors, consultants, contractors or agents.

(b) The provisions contained in Section 9 (a) will not apply to information (i) that is or becomes generally known to the public by means other than a breach of duty on the part of the receiving party, (ii) is known to the receiving party prior to disclosure by the disclosing party, as established by receiving party’s written records, (iii) is independently developed by or for the receiving party, as established by the receiving party’s written records or (iv) is generally released by the disclosing party without restriction. Notwithstanding anything contained in the Agreement to the contrary, the Agreement shall not prohibit the receiving party from disclosing Confidential Information of the disclosing party to the extent required in order for the receiving party to comply with applicable laws and regulations, provided that the receiving party provides prior written notice of such required disclosure to the disclosing party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

(c) Without limiting the definition of Confidential Information, Vendor shall treat the Drop Ship Agreement, and any applicable Product Order Upload as Confidential Information of the Company.

(d) The parties acknowledge that any breach or threatened breach of the provisions of Section 9 of the Agreement would cause irreparable harm, and that a remedy at law would be inadequate, and therefore agree that either party shall be entitled to seek injunctive relief in case of any such breach or threatened breach.

(e) Vendor agrees that any and all of the Company’s Customer Information is the exclusively owned by the Company shall always be considered Company Confidential Information notwithstanding the provisions of Section 9(b).

**10. Publicity.** The parties agree that no press release or public announcement related to the other party or the relationship between the parties shall be made without the other party’s prior written consent.

**11. Ownership of Intellectual Property.** Nothing in the Agreement shall be deemed to give either party any ownership interest in any patent, invention, technology, copyright, trademark or other intellectual property right of the other party.

**12. License.** Vendor hereby grants the Company a non-exclusive, worldwide right and license (a) to reproduce, display, sublicense, modify and publish the Vendor Content (in any media, including but not limited to print, video and/or other electronic format) in connection with the offer, promotion and/or sale of the Products and the operation and promotion of the Sale Site, and (b) to display, sublicense and publish Vendor's and all Product-related trademarks and logos on the Sale Site and in the Company's or Business Associate's print, video, electronic and other advertising and promotional collateral and other materials relating to the offer, promotion and/or sale of the Products.

**13. Insurance Policies.** Vendor will at its sole cost and expense maintain policies of insurance to maintain insurance as follows: statutory amounts of workers' compensation; commercial general liability (including contractual liability) for bodily injury and tangible property damage with a combined single limit of at least \$2,000,000 per occurrence; employer's liability in the amount of \$500,000; and product liability with limits of at least \$1,000,000 per claim. Such policies shall name the Company as an additional insured.

**14. Term.** The term of the Agreement shall commence as the Effective Date and shall continue in force until terminated as provided herein.

**15. Shipping & Failure to Fulfill.** If Vendor cannot ship a Product in a manner that meets the requirements set forth herein, Vendor shall notify the Company on the day that such order was to be shipped. Vendor shall relate the reasons for any delay and the projected delivery date. Vendor agrees that if a Product is not shipped to the Customer within the timeframe set forth in the Drop Ship Agreement, without limiting the Company's other rights and remedies as set forth herein, the Company reserves the right to charge back to Vendor any shipping charges credited to the Customer, and Vendor shall ship such Product to the Customer at Vendor's expense via overnight mail with an approved carrier no later than the day after the date that such shipment should have been made in accordance with the Order Information.

#### **16.1 Termination.**

(a) The Agreement may be terminated at any time by either party for any reason upon thirty (30) days prior written notice of termination. Notwithstanding the foregoing or any other provision of the Agreement, the Company has the right at any time in its discretion to remove all or any of the Products from the Sale Site without liability.

(b) Either party may terminate the Agreement at any time in the event of a material breach by the other party, if the breaching party shall fail to cure such breach within ten (10) calendar days of receipt of written notice thereof, provided that this cure period shall not apply in the event that Vendor fails to reserve the inventory for the Products as set forth in the Drop Ship Agreement. If Vendor fails to reserve the inventory for the Products as set forth in the Drop Ship Agreement, Vendor agrees to reimburse the Company for reasonable costs incurred by the Company in connection with the production, marketing and launching of the Event.

(c) The Agreement may also be terminated in accordance with the provisions of Section 18.7.

**16.2 Effects of Termination.** Upon the effective date of the termination of the Agreement (the "Termination Date") all rights and obligations of the parties hereunder shall cease, except as follows:

(a) Within thirty (30) days of such Termination Date, each party will return to the other party all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information;

(b) In addition, the parties' obligations under Sections 1, 4, 5, 8-12, and 15 – 18, inclusive, hereof shall survive any termination of the Agreement in accordance with their terms.

(c) Vendor shall fulfill all Orders and the parties shall fulfill all obligations arising prior to the termination date.

#### **17. Representations, Warranties and Indemnity.**

**17.1 No Conflicts.** Each party represents and warrants to the other that its performance of its obligations under the Agreement will not conflict with or result in a breach or violation of any of the terms or provisions or constitute a default under any agreement by which it is bound and that it is not a party to any agreement containing a non-competition clause or other restriction with respect to (i) the activities and services which it is required to perform hereunder, or (ii) the use or disclosure of any information directly or indirectly related to the transactions contemplated by the Agreement.

**17.2 Representations and Warranties.** Vendor represents and warrants to the Company that (a) Vendor shall deliver to Customers good and marketable title to the Products sold hereunder, free of any and all liens or other encumbrances, (b) to its knowledge, the Products do not and will not infringe upon or misappropriate the patent, copyright, trade secret, trademark, service mark or other proprietary rights of any other party, (c) the Products shall be genuine and of first class quality and workmanship, (d) the Products comply with applicable laws, ordinances, orders, guidelines, standards, rules and regulations, (e) Vendor has all requisite right, power and authority to enter into the Agreement and perform its obligations and grant the rights, licenses and authorizations it grants hereunder; (f) no Product has been or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (g) Vendor will comply with all Applicable Laws as defined in Section 18 below, (h) all Products are suitable for their intended purpose; (i) the Vendor Content is and will be when published on the Sale Site, current, accurate and complete; (j) that any Vendor Content provided to the Company is produced/made by Vendor, or that Vendor has all rights to provide such Vendor Content to the Company; (k) the Company has the unconditional right to use, sub license and display such Vendor Content, and (l) the Vendor Content does not infringe the intellectual property rights of any third person. Vendor agrees that all Product outside packaging will comply with all applicable laws, including but not limited to labeling, any and all appropriate warnings and shipping requirements.

**17.3 Manufacturers' Warranties.** Vendor agrees that the warranty from the manufacturer of each Product will be passed on to the Customer without additional charge.

**17.4 Indemnity by Vendor.** Vendor will defend, indemnify and hold harmless the Company and its affiliates and Customers (and their respective employees, directors, agents, and representatives) (the "Company Indemnified Persons") from and against any and all claims, costs, damages, judgments and expenses (including reasonable attorneys' fees) ("Damages") arising out of any third party claim, action or proceeding (collectively, "Claim") to the extent such Claim is based on (a) any actual or alleged breach of the Vendor's representations or warranties set forth in this Section 17 or its obligations under the Agreement, (b) any actual or alleged infringement of any intellectual property rights (including, without limitation, patents, copyrights, trademarks, service marks, trade names, trade dress, proprietary logos or insignia or other source or business identifiers) by the Products, the Vendor Content, or any technology or system used by Vendor in its performance hereunder, and (c) any other injury, harm or damage caused by the Products (including the advertisement, offer, sale or return of the Products and claims based upon product liability or personal injury), the Vendor Content or other information, data, materials or other items provided or made available by Vendor under the Agreement.

**17.5 Indemnity by Company.** The Company will defend, indemnify and hold harmless Vendor and its affiliates (and their respective employees, directors, agents and representatives) (the "Vendor Indemnified Persons") from and against any and all Damages arising out of any third party Claim to the extent such Claim is based on (a) any actual or alleged breach of the Company's representations or warranties set forth in this Section 17 or its obligations under the Agreement, or (b) any actual or alleged infringement of any intellectual property rights (including, without limitation, patents, copyrights, trademarks, service marks, trade names, trade dress, proprietary logos or insignia or other source or business identifiers) by any content on the Sale Site, other than the Vendor Content, the Products, or other information, data, materials or other items provided or made available by Vendor under the Agreement.

**17.6 Procedure.** In connection with any Claim described in Section 17.4 (Indemnity by Vendor) or 17.5, (Indemnity by Company) the relevant Indemnified Person will (a) give the indemnifying party prompt written notice of the Claim (provided that any delay in notification will not relieve the indemnifying party of its obligations hereunder except to the extent that the delay impairs its ability to defend), (b) cooperate with the indemnifying party (at the indemnifying party's expense) in connection with the defense and settlement of the Claim and (c) permit the indemnifying party to control the defense and settlement of the Claim (except as provided below), provided that the indemnifying party may not settle the Claim without the Indemnified Person's prior written consent. Further, the Indemnified Person (at its own cost) may participate in the defense and settlement of the Claim with counsel of its own choosing.

**17.7 No Warranty as to Sale Site.** Vendor acknowledges that the Company makes no warranty whatsoever with respect to the operation, availability, content or quality of the Sale Site, the number of Products that may be sold thereon, the number of Customers who may visit it, or any other factor that might affect Vendor's ability to offer or sell Products through the Sale Site. THE SALE SITE IS PROVIDED "AS IS", AND THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT AND TITLE.

**17.8 Exclusion of Damages.** Except for a breach by Vendor of the obligations set forth in Section 9 (Confidential Information), Section 17.4 (Indemnity by Vendor), and Section 17.5 (Indemnity by Company), hereunder, neither party shall be liable to the other party for any indirect, consequential, exemplary, special, incidental, multiple or punitive damages even if advised of the possibility of such damages.

**17.9 Limitation of Liability.** The liability of the Company for any loss or damages suffered by Vendor in connection with the Agreement or any failure, act, omission or breach of the Agreement by the Company shall not exceed the amount paid to the Vendor for Products sold on the Sale Site during the six months preceding the claim.

**17.10 Set Off.** The Company has the right to set off any amounts that may be due to Vendor and such set off amount shall be deducted from the amount owed under the applicable Insertion Order or charged against any future orders with Vendor.

## **18. General**

**18.1 Independent Contractors and Title.** Each party shall be deemed to be an independent contractor hereunder. The Agreement creates no relationship of joint venture, partnership, or agency between the parties, and the parties hereby acknowledge that no other facts or relations exist that would create any such relationship between them. At no time does the Company take title to the Product.

**18.2 Assignment.** Neither party may transfer, assign or sell the Agreement or any part thereof, without the prior written permission of the other party, provided that either party may assign the Agreement and its rights and obligations hereunder in connection with a corporate reorganization, merger, or sale or transfer of all or substantially all of its assets. The Agreement shall be binding upon and shall inure to the benefit of each party and its permitted successors and assigns.

**18.3 Complete Agreement.** The Agreement, including any exhibits, amendments and other documents or materials referenced herein is the exclusive statement of the agreement of the parties with respect to its subject matter as of this date and supersedes all prior written or oral agreements. The Agreement is subject to revision by Company. If Company makes any material changes, as determined by the Company and in its sole discretion, Company will notify Vendor in writing or via email to the email address set forth in on the cover page of the Drop Ship Agreement. Any changes will be effective upon the date specified in such notice. Such changes will not apply to Vendor's participation in the Drop Ship Program prior to the effective date of the changes. Vendor's continued participation in the Drop Ship Program constitutes Vendor's acceptance of any such changes.

**18.4 Order of Precedence.** These Standard T&Cs, the Drop Ship Agreement and any Product Order Uploads are the entire agreement between the parties and supersede any prior agreements, proposals or representations, written or oral, concerning its subject matter. In the event of any conflict or inconsistency among such documents, the order of precedence shall be: (1) the applicable Drop Ship Agreement, (2) the Standard T&Cs, and (3) any amendments or additional exhibits made hereto.

**18.5 No Implied Waivers.** The failure of either party to enforce at any time any of the provisions of the Agreement, or the failure to require at any time performance by the other party of any of the provisions of the Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter. The express written waiver by either party of any provision, condition or requirement of the Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**18.6 Taxes.** Each party will be responsible in accordance with applicable law for the collection and payment of any taxes, including, but not limited to, all sales, use, excise, import, export, value added and other taxes and duties assessed, incurred or required to be collected or paid for any reason in connection with any advertisement, offer or sale of Products on or through the Sale Site, or otherwise in connection with any action, inaction or omission of Vendor or its affiliates or their respective employees, agents, contractors or representatives.

**18.7 Force Majeure.** Neither party shall be liable for any delay or failure in performance under the Agreement, or for any interruption of services rendered hereunder, which result directly or indirectly from acts of God, civil or military authority, act of public enemies, war, accidents, fires, explosions, earthquakes, floods, the elements or any other similar cause beyond the reasonable control of the non-performing party, provided that, in order to be excused from delay or failure to perform, the non-performing party must act diligently to remedy such delay or failure. In the event such delay continues for five (5) or more consecutive days, the other party shall have the right to terminate the Agreement upon notice to the non-performing party.

**18.8 Severability.** If any provision of the Agreement should, for any reason, be held invalid or unenforceable in any respect, the remainder of the Agreement shall be enforced to the full extent permitted by law. A court of competent jurisdiction is hereby empowered to modify the invalid or unenforceable provision to make it valid and enforceable.

**18.9 Headings; Construction.** The headings of various paragraphs of the Agreement are inserted merely for the purposes of convenience and do not expressly or by implication limit, define, or extend the specific terms or text of the paragraph so designated. In resolving any dispute or construing any provision hereunder there shall be no presumptions made or inferences drawn because one

of the parties drafted the Agreement and each party waives any rights under any law that would require the interpretation of any ambiguities in the Agreement against the party that drafted it.

**18.10 Compliance with Laws.** Vendor shall comply, at its expense, with all applicable laws, regulations and rules. Without limiting the foregoing, Vendor shall comply, at its expense, with all applicable laws, regulations and rules relating to communications with Customers and sale and shipment of Products, including, without limitation, the Federal Trade Commission's Mail Order/Telephone Order Rule and Fair Information Practices, and all rules and regulations related to the California Safe Drinking Water and Toxic Enforcement Act of 1986 as in effect from time to time (also known as "Proposition 65")(the "Act") (collectively "Applicable Laws"). Without limiting Vendor's indemnity obligations, Vendor will be responsible for paying or reimbursing all costs, fines, penalties and expenses incurred by the Company as a result of Vendor's non-compliance with the Applicable Laws and will reimburse the Company for all costs that it may incur in connection with compliance thereof in relation to sale of the Products. As it relates to the Act (including Section 25600.2), Company does not accept and specifically rejects Vendor's notice to the Company as compliance with the Act. The Company shall not accept any effectuation of compliance with the Act by any means other than by the Vendor's strict compliance by affixing a label to the applicable Product bearing a warning that satisfies Section 25249.6 of the Act.

**18.11 Governing Law.** The Agreement shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the Commonwealth of Massachusetts, USA, excluding its conflict of law principles. Each party hereby irrevocably consents to personal jurisdiction in the federal and state courts located in the city of Boston, Massachusetts and irrevocably waives, in connection with any such action or proceeding, any objection, including without limitation any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction.

**18.12 Notices.** All notices required or desired to be given hereunder shall be in writing and if not personally delivered, be sent by facsimile (with copy by ordinary mail) or by overnight courier or registered or certified mail to the party's address set forth on the Drop Ship Agreement, or of which a party notifies the other party in writing in accordance with this Section. If sent via facsimile or personally delivered, notices shall be deemed to have been given in the day when personally delivered or sent. If mailed by overnight courier or registered or certified mail, notices shall be deemed to have been given when received.

*Effective Date: May 4, 2020*