

**Transfac**

**Purchase and Sale Agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| This Purchase and Sale Agreement (“Agreement”) is made and entered into by and between Transfac Capital, Inc., as servicer for Transfac, LLC (“Transfac”), with an address of 257 East 200 South, Suite 350, Salt Lake City, Utah 84111, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Client”), a \_\_\_\_\_\_\_\_\_\_\_\_\_ (corporation, limited liability company, etc.) with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.** | | | |
| **Maximum Advance:**  \_\_\_\_\_\_\_\_\_\_\_\_\_dollars ($\_\_\_\_\_\_\_\_\_) | **Service Fee:** \_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_%) of the face amount of each Purchased Account for the first \_\_\_\_\_ ( ) days aging from the date of the Purchase of the Account plus an additional \_\_\_\_\_ percent (\_\_\_%) per every \_\_\_\_\_ ( ) days thereafter until the Account is paid in full. | | **Account Due Date** |
| **Advance Rate**  \_\_\_\_\_\_\_\_\_\_\_\_\_ percent (\_\_\_%) | **Reserve**  \_\_\_ percent ( %) | **Daily Funds Rate (if applicable)**  \_\_% (Prime plus \_\_% divided by 360) | **□ Recourse**  **□ Non-Recourse** |

**For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:**

1. **Definitions.** Terms defined in the singular shall have the same meaning when used in the plural and vice versa. Terms defined herein shall have the meanings set forth in the UCC, except as otherwise explicitly defined herein. As used herein, the term:

**“Acceptable Account”** means an Account of Client conforming to the representations and warranties in this Agreement and determined to be acceptable for purchase under this Agreement in the sole and absolute discretion of Transfac. **“Account”** shall have the meaning set forth in the UCC. **“Account Debtor”** shall have that meaning set forth in the UCC. **“Account Due Date”** means the number of days from the date of the invoice evidencing the Account. **“Advance Rate”** means the percent as may be determined from time to time by Transfac in its sole discretion. Transfac may set different Advance Rates for different Account Debtors, in its sole discretion. **“Chargeback Account”** means an outstanding Purchased Account which is past the Account Due Date or is determined to no longer be an Acceptable Account. “**Chargebacks”** mean if a Purchased Account is not paid in full by the Account Due Date, or if at any time Transfac determines that all or a portion of an Account is no longer an Acceptable Account, the Account shall automatically be a Chargeback Account. Client shall immediately re-purchase and be responsible for all Chargeback Accounts by paying the full outstanding amount and all fees and costs owing on the Chargeback Account. **“Collateral”** means all of Client’s now owned, or hereafter acquired Accounts, Goods, Equipment, Inventory, Financial Assets, Chattel Paper, Electronic Chattel Paper, Letters-of-Credit, Letter-of-Credit Rights, General Intangibles, Investment Property, Deposit Accounts, Instruments, the Reserve Account Commercial Tort Claims, Supporting Obligations, motor vehicles, books, records, files, computer data related to the foregoing, and all Proceeds of the foregoing. **“Collected Payments”** means collections and payments received by Transfac on Accounts of Client, less all fees and charges, amounts due and payable to Transfac by Client, deductions and setoffs. Credits for Collected Payments shall be provisional and subject to final payment and collection of the deposited item. For purposes of this Agreement, Collected Payments will not be deemed collected by Transfac until five (5) Banking Business Days after the check or other payment therefore is received by Transfac. **“Daily Funds Rate”** means, if applicable, the rate indicated above. This amount is charged monthly on the average Outstanding Advances, charged monthly in arrears. The Daily Funds rate shall increase or decrease on the same date as any change in the Prime Rate as defined by the Prime Rate Adjustment. **“Default Rate”** means one hundred sixty seven thousands of one percent (0.167%) per diem. **“Event of Default”** shall have the meaning set forth in Section 12 of this Agreement. **“Invalid Invoice Fee”** means ten percent (10%) of the face amount of any Purchased Account as liquidated damages for failure to comply with Section 6(i) of this Agreement. **“Invoice Creation Fee”** means an amount equal to five dollars ($5.00) per invoice if Client has Transfac create an invoice, attach all supporting documents to the invoice and send to Client’s customers. **“Maximum Advance”** means the maximum aggregate amount of outstanding advances as may be determined from time to time by Transfac in its sole discretion. **“Missing Notation Fee”** means ten percent (10%) of the face amount of any Purchased Account which does not have a Notation on the invoice, as liquidated damages for failure to include the Notation. **“Monthly Minimum Service Fee”** means an amount equal to one half of one percent (0.50%) of the Maximum Advances for each month of the Contract Term. **“Non-Recourse”** means that Transfac accepts the credit risk of the Account Debtor if the Account Debtor files for Bankruptcy within 45 days of the date the Account was purchased. Transfac will always have recourse against Client for unpaid Accounts where (i) the Account Debtor has not filed for Bankruptcy; (ii) Client has breached any warranty, representation, covenant or promise in this Agreement; (iii) Client and the Account Debtor are in a dispute of any kind; and (iv) Account Debtor asserts a claim of loss, damage, set-off or recoupment of any kind against Client. **“Notation”** means all invoices for any Account Debtor shall have the following on each invoice: “This Account has been sold and assigned to Transfac Capital, Inc., as servicer for Transfac, LLC, P.O. Box 3238, Salt Lake City, Utah 84110-3238,” or such other notation as may be required by Transfac. **“Obligations”** means and includes each and all of the following: the obligation to pay and perform when due all debts and all obligations, liabilities, covenants, agreements, guaranties, warranties, and representations of Client, of any and every kind and nature, whether heretofore, now or hereafter owing, arising, due or payable from Client to Transfac; howsoever created, incurred, acquired, arising or evidenced; whether primary, secondary, direct, absolute, contingent, fixed, secured, unsecured, or otherwise; whether as principal or guarantor; liquidated or unliquidated; certain or uncertain; determined or undetermined; due or to become due; as a result of present or future advances or otherwise; joint or individual; pursuant to or caused by Client’s breach of this Agreement, or any other present or future agreement or instrument, or created by operation of law or otherwise; evidenced by a written instrument or oral representation; created directly between Client and Transfac or owed by Client to a third party and acquired by Transfac from such third party; monetary or nonmonetary. **“Other Fees and Costs”** means all other fees and costs related to the administration of this Agreement. **“Payment Conversion Fee”** means the following if Client fails to tender to Transfac any payment received by Client on a Purchased Account within three (3) Banking Business Days, as required in this Agreement, or if Transfac discovers on its own that Client received the payment on a Purchased Account and failed to voluntarily tender such payment to Transfac, the Client shall pay Transfac as liquidated damages the greater of forty percent (40%) of the face amount of such Purchased Account or three hundred fifty dollars ($350.00). **“Prime Rate Adjustment”** means for every one quarter percent (0.25%) change in the Prime Rate, the Daily Funds rate will be adjusted by the same percentage (0.25%) effective the day that a change in the Prime Rate occurs. If there is not a Daily Funds Rate, the Service Fee will be adjusted to reflect an increase in the Prime Rate in Transfac’s sole discretion.**“Processing and Set up Fee”** indicated on Exhibit “A” means a onetime charge which Transfac will withhold from the Client’s first Accounts submitted for Purchase. **“Purchased Account”** means an Account purchased by Transfac pursuant to this Agreement. **“Rebate”** means Transfac agrees to return the amount of the reserve deposit in excess of the required reserve, the sum of the Service and Administrative Fees and other fees and costs, not to be less than ten dollars ($10.00) per invoice, once the Account is paid in full and there is no event of default. **“Recourse”** means that Client will repurchase any Account purchased by Transfac if the Account remains unpaid for any reason after the number of days indicated on Exhibit “A”. **“UCC”** means the Uniform Commercial Code, as adopted now or in the future, in the State of Utah.

1. **Purchase of Accounts:** Client shall submit Accounts for purchase by submitting a schedule of Accounts and Bill of Sale, copies of the invoices listed on the schedule of Accounts and Bill of Sale, and supporting documentation for such invoices as requested by Transfac.

Transfac may purchase from Client such Acceptable Accounts as Transfac elects and shall notify Client which Accounts are purchased by providing reports to Client. All purchases shall be subject to the terms and conditions of this Agreement. Transfac is under no obligation to purchase any Account from Client and all purchases under this Agreement shall be within Transfac’s sole and absolute discretion. Each purchase by Transfac shall be a true purchase with transfer of all legal and equitable title and shall not be deemed to be a loan or financing agreement. Accounts shall be the sole and exclusive property of Transfac, and Client shall thereafter have no right, title, or interest in or to Purchased Accounts or payments thereon.

1. **Procedures**: include but are not limited to: (a) Client shall not bill for, submit any invoice, or otherwise attempt to collect any Purchased Account; (b) Client authorizes Transfac to contact Account Debtors directly concerning verification and payment of Accounts; (c) Client shall promptly submit any supporting and backup documentation for each Account; (d) Client shall promptly and completely respond to all requests from Transfac for any information or records requested to assist in collection or verification of Accounts; (e) Upon inquiry from an Account Debtor or upon request of Transfac, Client shall notify the Account Debtor to make payment directly to Transfac; (f) all invoices for any Account Debtor should have the Notation; (g) Client shall immediately notify Transfac of any dispute concerning any Purchased Account and of any bankruptcy filing, lien, garnishment, or other legal action concerning any Purchased Account or Account Debtor; and (h) any payments received by Client on Purchased Accounts shall be held in trust by Client for Transfac. In the event an Account Debtor makes payment to Client on any Purchased Account, Client shall immediately notify Transfac of the payment and deliver the payment to Transfac. If payment is made by check or similar instrument, such instrument shall be immediately delivered to Transfac in the form received without negotiation. If any payment received by Client on any Purchased Account is deposited or negotiated by Client, or if Client fails to tender the payment to Transfac within three (3) Banking Business Days of receipt by Client, Client shall promptly pay Transfac the Payment Conversion Fee as liquidated damages.
2. **Fees, Charges, Reserve, Rebate, and Collected Payments:**

Service and Administrative Fees**:** The Advance Rate indicated above shall apply for each Acceptable Account purchased by Transfac. Client agrees to pay to Transfac a Service Fee, and a Daily Funds Rate. if applicable, as indicated above until the Acceptable Account is paid in full or until the date it becomes a chargeback.

Rebate: The Rebate will be paid weekly and may be retained by Transfac at Transfac’s sole discretion as further security for any and all obligation owing by Client to Transfac.

Reserve & Refund: Transfac will reserve and withhold an amount equal to the percentage of the gross face amount of all Acceptable Accounts purchased under this Agreement (the “**Reserve Account**”). The Reserve Account may be held and/or applied by Transfac against Chargebacks or any of the Obligations or fees known or anticipated. In the event, the reserve is less than the Chargeback or other Obligations such as short pay or fees, then the amount difference will be deducted from Client’s next settlements. The Reserve Account shall be a book balance maintained on the records of Transfac and shall not be a segregated fund. The Reserve Account will be due and payable to Client when each invoice is paid in full, and only if there is no Event of Default and in accordance with Transfac’s sole discretion.

Collected Payments: Credits for Collected Payments shall be provisional and subject to final payment and collection of the deposited item. For purposes of this Agreement, Collected Payments will not be deemed collected by Transfac until five (5) Banking Business Days after the check or other payment therefore is received by Transfac.

Other Fees: Client shall pay all other collection-related fees and charges of Transfac immediately when assessed, which includes but is not limited to the invoice Creation Fee, Missing Notation Fee, and Payment Conversion Fee.

1. **Client represents, warrants, and covenants that:** (a) The execution, delivery, and performance by Client of this Agreement have been duly authorized by all necessary action on the part of Client, and are not inconsistent with any organizational documents of Client, do not and will not contravene any provision of, or constitute a default under, any contract to which Client is a party or by which it is bound, and upon execution and delivery hereof, this Agreement will constitute a legal, valid, and binding agreement and obligation of Client, enforceable in accordance with its terms; (b) this Agreement and all other statements furnished by Client to Transfac in connection herewith contain no untrue statement of a material fact and omit no material fact necessary to make the statements contained therein or herein not misleading; (c) Client has not failed to disclose in writing to Transfac any fact that materially and adversely affects, or is reasonably likely to materially and adversely affect, the collectability of any Purchased Account; (d) Client has sole and unconditional good title to each Account offered for purchase and the Account is free from any security interest, assignment, lien, or other encumbrance of any type; (e) the Account is a bona fide, valid, and enforceable obligation of the Account Debtor for the amount identified on the applicable invoice and there have not been, and there will not be, any payments, deductions (including over, short, and damage claims), credits, discounts, payment terms, or other modifications or reductions in the amount owing on such Account; (f) the Account has been submitted to Transfac within seven (7) days of the date the goods are sold or the services performed giving rise to the Account are completed, except as otherwise agreed by Transfac; (g) there are no defenses or setoffs to payment of the Account which can be asserted by way of defense or counterclaim against Client or Transfac; (h) there have been no extensions, modifications, or other agreements relating to payment of such Account; (i) any services performed which give rise to the Account have been completed in compliance with all applicable laws, ordinances, rules, and regulations and were performed in the ordinary course of Client’s business, and the parties agree that Client shall immediately pay Transfac the Invalid Invoice Fee as liquidated damages for violation of this Section; (j) Account is not owing by an employee, officer, or director of Client; (k) the Account is not owing by a parent, subsidiary, sister company, or other company related to or an affiliate of Client; (l) Transfac is authorized to file UCC Financing Statements concerning all Accounts of Client; (m) the place of business Client provided on the Transfac application is correct and will not be changed without at least thirty (30) days prior written notice to Transfac and (n) Seller will not sell, assign, or otherwise transfer its Accounts to any other person, firm, corporation or entity (including Merchant Cash Advance or ACH servicers).
2. **Term:** The “Contract Term” of this Agreement means­­­­ (\_\_\_) year(s) and begins from the first Purchase of Accounts and will be automatically renewed for another Contract Term, not to be less than one year, unless Client terminates this Agreement by giving no less than sixty (60) days prior written notice. Transfac may terminate this Agreement at any time upon thirty (30) days written notice or immediately upon occurrence of an Event of Default. If an Event of Default terminates this Agreement or if Client elects to terminate this Agreement at any time other than the last day of a Contract Term, Client shall pay Transfac a “**Termination Fee**” equal to the greater of (i) the average monthly fees earned by Transfac from Client over the immediately prior three (3) calendar month period; or (ii) two percent (2.0%) of the Maximum Advances, for each of the remaining months and partial months in the then remaining term of this Agreement.
3. **Discharge of Security Interests:** Transfac may, in its sole and absolute discretion, elect to discharge any security interest, lien, or other encumbrance upon any Purchased Accounts; elect to pay any subcontractor, vendor, material man, laborer, or other person to whom Client is obligated, whether or not any mechanic’s lien or other encumbrance has been asserted; and elect to pay any insurance charges payable by Client. Any such payments and all expenses incurred by Transfac in connection therewith shall be immediately due and payable by Client. Transfac shall have no obligation to discharge any such security interest, lien, or other encumbrance or pay such insurance charges or provide such insurance.
4. **Power of Attorney:** Client does hereby irrevocably authorize Transfac, at Client’s expense, to exercise at any time the power to endorse the name of Client upon any checks or other forms of payment on Accounts and to effect the deposit and collection thereof until all of the Obligations have been paid in full. Client does hereby irrevocably authorize Transfac, at Client’s expense, with such authorization to be exercised only upon the occurrence of an Event of Default, to: (a) receive, open, and dispose of all mail addressed to Client; (b) cause mail relating to Accounts of Client to be delivered to a designated address of Transfac where Transfac may open all such mail and remove therefrom any payment of such Accounts; and (c) Transfac may do any and all other things necessary or proper to carry out the intent of this Agreement and to perfect or protect the rights of Transfac created under this Agreement. Exercise of any of the foregoing powers shall be in the sole discretion of Transfac without any duty to provide Client with additional notice and may not be revoked by Client.
5. **No Third Party Beneficiaries:** This Agreement is made for the sole and exclusive benefit of Transfac and Client and is not intended to benefit any third party. No such third party may claim any right or benefit or seek to enforce any term or provision of this Agreement.
6. **Waiver, Release and Indemnity.** CLIENT HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS (INCLUDING CONTRACT, TORT, AND EQUITABLE CLAIMS) WHICH MAY BE ASSERTED AGAINST TRANSFAC, PRESENTLY EXISTING OR ARISING IN THE FUTURE, KNOWN OR UNKNOWN, ARISING FROM OR RELATING IN ANY MANNER TO THE PURCHASE, FINANCING, OR COLLECTION OF ACCOUNTS PURSUANT TO THIS AGREEMENT, EXCLUDING ONLY BREACH OF CONTRACT BY TRANSFAC UNDER CIRCUMSTANCES THAT SUCH BREACH AMOUNTS TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. CLIENT HEREBY AGREES TO INDEMNIFY TRANSFAC FOR ALL LIABILITIES AND DAMAGES (INCLUDING CONTRACT, TORT AND EQUITABLE CLAIMS) WHICH MAY BE AWARDED, AGAINST TRANSFAC, AND FOR ALL REASONABLE ATTORNEY FEES, LEGAL EXPENSES, AND OTHER EXPENSES INCURRED IN DEFENDING SUCH CLAIMS, ARISING FROM OR RELATING IN ANY MANNER TO THE PURCHASE, FINANCING, OR COLLECTION OF ACCOUNTS PURSUANT TO THIS AGREEMENT (INCLUDING ALL REASONABLE ATTORNEY FEES, LEGAL EXPENSES, AND OTHER EXPENSES INCURRED IN DEFENDING ANY SUCH CLAIMS BROUGHT BY CLIENT IF CLIENT DOES NOT PREVAIL IN SUCH ACTIONS), EXCLUDING ONLY BREACH OF CONTRACT BY TRANSFAC UNDER CIRCUMSTANCES THAT SUCH BREACH AMOUNTS TO GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TRANSFAC SHALL HAVE SOLE AND COMPLETE CONTROL OF THE DEFENSE OF ANY SUCH CLAIMS AND IS HEREBY GIVEN AUTHORITY TO SETTLE OR OTHERWISE COMPROMISE ANY SUCH CLAIMS AS TRANSFAC IN GOOD FAITH DETERMINES SHALL BE IN ITS BEST INTERESTS.
7. **Events of Default:** Time is of the essence in this Agreement. The occurrence of any of the following events shall constitute a default under this Agreement and be termed an “Event of Default”: (a) Client Fails to timely perform any of its obligations under this Agreement; (b) any representation or warranty made by or on behalf of Client in this Agreement proves to have been false or misleading when made or furnished, however minor; (c) Client fails to respond to any material communication initiated by Transfac within three (3) Banking Business Days, or (d) Transfac, for any reason, in good faith, deems itself insecure with respect to the prospect of repayment or performance of the obligations of Seller. Waiver of any Event of Default shall not constitute a waiver of any subsequent Event of Default. Upon the occurrence of any Event of Default and at any time thereafter, Client shall, upon demand, repurchase each outstanding Purchased Account that is the subject of the Event of Default for the face amount of the Account plus all accrued fees thereon, from the date of purchase until repurchased, both before and after judgment. In order to satisfy any of the Obligations, Transfac is authorized by Client to initiate electronic debit or credit entries through the Automated Clearing House (“ACH”) system to any deposit account maintained by Client wherever located. This authorization is irrevocable.
8. **Remedies:** Upon occurrence of an Event of Default, Client agrees to pay all costs and expenses, including reasonable attorney fees and legal expenses, incurred by Transfac in enforcing or exercising any remedies under this Agreement or any other rights and remedies, whether or not suit is brought. Client agrees to pay all expenses, including reasonable attorney fees and legal expenses, incurred by Transfac in any bankruptcy proceedings of any type involving Client, this Agreement, or the Purchased Accounts, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization. The rights and remedies herein conferred are cumulative and not exclusive of any other rights or remedies and shall be in addition to every other right, power, and remedy herein specifically granted or existing at law, in equity, or by statute which Transfac might otherwise have and may be exercised from time to time and as often and in such order as may be deemed expedient by Transfac. No delay or omission by Transfac in the exercise of any such right, power, or remedy or in the pursuance of any remedy shall impair any such right, power, or remedy or be construed to be a waiver of any Event of Default or to be an acquiescence therein.
9. **Bankruptcy:** Client covenants that it will notify Transfac of any voluntary or involuntary bankruptcy petition under the United States Bankruptcy Code filed by or against Client, or any assignment for the benefit of creditors by Client or any guarantor, within twenty-four (24) hours of any such filing or assignment. Failure to notify Transfac of any such bankruptcy filing or assignment within twenty-four (24) hours shall constitute an Event of Default.
10. **Avoidance Action:** If the incurring of any debt by Client or the payment of any money or transfer of property to Transfac by or on behalf of Client (including collection of any Account) should for any reason subsequently be determined to be “voidable” or “avoidable,” in whole or in part, within the meaning of any state or federal law (collectively “voidable transfers”), including, without limitation, fraudulent conveyances or preferential transfers under the United States Bankruptcy Code or any other federal or state law, and Transfac is required to repay or restore any voidable transfers or the amount or any portion thereof, or is advised to do so by its counsel, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorney fees of Transfac related thereto, the liability of Client shall automatically be revived, reinstated, and restored and shall exist as though the voidable transfers had never been made. This Section shall survive termination of this Agreement
11. **Limitation of Liability:** Transfac and its members, officers, employees, representatives, agents, and attorneys, shall not be liable to Client for consequential damages arising from or relating to any breach of contract, tort, or other wrong in connection with the negotiation, documentation, administration of this Agreement or collection of the Accounts.
12. **Force Majeure:** In the event Transfac is unable to carry out its obligations under this Agreement due to reasons beyond its reasonable control, it is agreed that the obligations of Transfac hereunder shall be suspended during the continuance of such inability, Transfac shall not be liable for damages, and Client shall not be entitled to any refund of amounts paid, provided that such cause shall be remedied as far as reasonably possible with all reasonable dispatch.
13. **Savings:** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
14. **Grant of Security Interest:** As security and collateral for the Obligations, Client hereby grants to Transfac a continuing security interest in, and assigns to Transfac, all of Client’s right, title, and interest in and to the Collateral.
15. **Attorney Fees:** In recognition of Transfac’s right to have its attorney fees and other expenses incurred in connection with this Agreement secured by Collateral, notwithstanding payment in full of all Obligations by Client, Transfac shall not be required to record any terminations or satisfactions of any of Transfac’s liens on the Collateral unless and until Client has executed and delivered to Transfac a general release in a form suitable to Transfac. Client understands that this Section constitutes a waiver of its rights under Section 9-513 of the UCC.
16. **Jury Waiver/Venue:** CLIENT HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM, OR COUNTERCLAIM, WHETHER IN CONTRACT OR IN TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. CLIENT ACKNOWLEDGES THAT BY EXECUTION AND DELIVERY OF THIS AGREEMENT, CLIENT HAS TRANSACTED BUSINESS IN THE STATE OF UTAH AND CLIENT HEREBY VOLUNTARILY SUBMITS TO, CONSENTS TO, AND WAIVES ANY DEFENSE TO THE JURISDICTION OF COURTS LOCATED IN THE STATE OF UTAH AS TO ALL MATTERS RELATING TO OR ARISING FROM THIS AGREEMENT. EXCEPT AS EXPRESSLY AGREED IN WRITING BY TRANSFAC, THE STATE AND FEDERAL COURTS LOCATED IN SALT LAKE COUNTY, UTAH, SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OF ANY AND ALL CLAIMS, DISPUTES, AND CONTROVERSIES ARISING UNDER OR RELATING TO THIS AGREEMENT. THE CHOICE OF LAW REGARDING ANY DISPUTE BETWEEN THE PARTIES SHALL BE THE LAWS OF THE STATE OF UTAH, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. NO LAWSUIT, PROCEEDING, ALTERNATIVE DISPUTE RESOLUTION, OR ANY OTHER ACTION RELATING TO OR ARISING UNDER THIS AGREEMENT MAY BE COMMENCED OR PROSECUTED IN ANY OTHER FORUM, OR APPLYING ANY OTHER LAW, EXCEPT AS EXPRESSLY AGREED IN WRITING BY TRANSFAC.
17. **Execution of Documents:** Client shall sign all necessary documents to protect and preserve Transfac’s interests under this Agreement and is authorized to apply Client’s scanned signature(s) to certain documents to include, but not be limited to, Notices of Assignment, IRS Form 8821, and documents necessary to make or receive payments from Client via ACH. Client’s and Guarantor‘s scanned signatures affixed to this Agreement or any other related documents shall have the same force and effect under the law as original signatures. Client hereby agrees to name Transfac as a certificate holder on any liability and cargo policies of insurance that it may be required to carry and hereby appoints Transfac as its claims manager under any cargo policy.
18. **Successors and Assigns:** This Agreement is not assignable or transferable by Client and any such purported assignment or transfer is void. This Agreement shall be binding upon the successors of Client. Client acknowledges and agrees that Transfac may assign all or any portion of this Agreement, including, without limitation, assignment of the rights, benefits, and remedies of Transfac hereunder without any assignment of the duties, obligations, or liabilities of Transfac hereunder, and may sell participations in this financing. In connection with any assignment by Transfac, Inc., to Transfac, LLC, client shall honor Transfac, Inc.’s servicing arrangement with Transfac, LLC and understands that Transfac, Inc., shall be entitled to enforce all rights and remedies under this Agreement.
19. **Integrated Agreement:** This Agreement replaces and supersedes any prior agreement between Client and Transfac. This Agreement constitutes the entire agreement between Transfac and Client as to the subject matter hereof and may not be altered or amended except by written agreement signed by Transfac and Client. No provision hereof may be waived by Transfac except upon written waiver executed by Transfac. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah and this Agreement shall be deemed to have been executed by the parties in the State of Utah. This Agreement shall not be deemed to have been entered into until accepted by Transfac at its chief executive office in Salt Lake City, Utah and shall be performed by Transfac and the financing administered by Transfac in Salt Lake City, Utah.

**25. Fee for Not Providing Initial Invoices:** Client acknowledges and agrees that Transfac has incurred significant due diligence expenses and administrative costs in connection with the establishment of this Agreement. In the event Client executes this Agreement but fails to presents its Accounts to Transfac for purchase as required hereunder, or otherwise desires to terminate this Agreement without doing so, then client agrees to pay to Transfac a fee in the amount of $350.00 to reimburse Transfac for its due diligence expenses, administrative costs, and related damages.

|  |  |
| --- | --- |
| **Date: \_\_\_\_\_\_\_\_\_\_\_\_**  **cLIENT:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**    By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **TRANSFAC CAPITAL, INC.,**  as Servicer for Transfac, LLC  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**Continuing Guarantee:** The undersigned guarantor(s), jointly and severally, unconditionally guaranty (the “Continuing Guaranty”) to Transfac the validity of each invoice and for the payment and prompt performance by Client of all present and future Obligations due to Transfac from Client which may arise pursuant to the Purchase and Sale Agreement and upon occurrence of a monetary loss, guarantor shall pay Transfac the full amount of the loss. Each of the undersigned guarantors waives: notice of default, any defense relating to impairment of such guarantor’s rights or increasing any of guaranteed Obligations, the requirement that Transfac first resort to the Client on any of the Collateral, any defense due to perfection of a security interest in the Collateral, any defense arising out of disability of the Client or of any guarantor, any defense arising under UCC Sec. 9-601, et seq. Each of the undersigned guarantors hereby represents and warrants that it is in the undersigned’s best interest to enter into this Continuing Guaranty and that the undersigned has investigated Client’s business, operation, and condition. Guarantor(s) waive all rights to revoke this Continuing Guaranty. All capitalized and defined terms set forth in the Purchase and Sale Agreement apply with respect to this Continuing Guaranty. In addition, the terms and conditions of Paragraphs 18, 20, 21, 23, and 24 are incorporated into this Continuing Guaranty by reference, as though they were set out in full.

|  |  |
| --- | --- |
| **GUARANTOR(S)**  By:  Guarantor  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_  By:  Guarantor  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address:­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**EXHIBIT A**

**FEE STRUCTURE ADDENDUM**

Processing and Set up Fee: If no due diligence fee is received, $250.00

Same Day Funding Fee: Customer Service Representative will determine

ACH Fee: $5.00

Wire Fee: $25.00

FedEx Fee: Actual cost determined by FedEx.

Invoice Creation Fee: five dollars ($5.00) per invoice.

Facility Fee (if applicable):