

ARBOR GENTRY

This Vendor/Supplier Agreement (Agreement) is entered into this _____ day of _____, 20____ (Effective Date) between Arbor Gentry, LLC (herein referred to as Arbor Gentry), with principal offices at 421 Hudson Street Suite 203, New York, New York 10014 and supplier (Supplier). This Agreement governs the relationship between the parties and establishes terms and conditions with respect to the sale of Supplier's products (Products) through website and/or applications owned, controlled and/or operated by Arbor Gentry (Site).

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RESPONSIBILITIES OF THE PARTIES

A. **ARBOR GENTRY RESPONSIBILITIES**

- (1) Establish the price for Products sold through Site (Site Price). The Parties agree Arbor Gentry will adhere to IMAP/MSRP pricing and further agree Arbor Gentry reserves the right to offer discounts to customers and purchasers as part of Arbor Gentry's promotional efforts;
- (2) Advertise, display, promote and sell Products through Site. Arbor Gentry reserves the right to remove any Product from Site at any time without notice. Arbor Gentry reserves the right to include or exclude brand names on the Site. Notwithstanding, Arbor Gentry will exclude brand names from Site, if requested by Supplier in writing;
- (3) Respond to customer inquiries and complaints;
- (4) Pay Supplier the negotiated wholesale cost (First Cost) per Product;
- (5) If applicable, pay Supplier the "Remittance" specified in Schedule "A" attached; and
- (6) Remit payments net 30 days from shipment confirmation date. Arbor Gentry's monetary obligations to Supplier shall be net after deducting all indemnities and/or other offsets. If this Agreement expires or is terminated, Arbor Gentry will withhold payment from Supplier to cover costs and fees related to returns, which may accrue beyond termination for a period not to exceed 90 days.

B. **SUPPLIER RESPONSIBILITIES**

- (1) Provide Product images, dimensions, weight, text, warranty, disclaimers, warnings and any other information requested through use of a build sheet;
- (2) Provide an approved packing insert for each order, including disclaimers and warning labels, if required by international, federal, state or local law, regulation, ordinance, administrative order or rule (Laws);
- (3) Remove all unapproved information in Products and packaging, including but not limited to third party marketing information, pricing tickets and other materials not directly from the manufacturer;
- (4) Respond to Arbor Gentry's requests within one (1) business day;
- (5) Pay all applicable "General Costs & Fees" and "Returns Costs & Fees" specified in Schedule "A";
- (6) Notify Arbor Gentry of any discrepancies or claims for payment by email within 60 days of the date Arbor Gentry paid Supplier for the Product. If Supplier fails, Supplier will be deemed to have waived claim(s); and
- (7) Notify Arbor Gentry immediately in writing if Supplier receives notice of non-compliance of Law.

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SHIPPING

A. **OPTIONS**

- (1) **USE OF ARBOR GENTRY'S CARRIER.** Supplier may elect to ship Products via Arbor Gentry's designated carrier on Arbor Gentry's shipping account. Additional shipping charges included by Supplier (including, but not limited to insurance and delivery confirmation) not requested by Arbor Gentry will be deducted from Supplier's payments. Arbor Gentry reserves the right to offset Supplier's payments for all charges not authorized, not properly deducted or resulting from Supplier's error, as reasonably determined by Arbor Gentry. Supplier

agrees not to ship non-Arbor Gentry merchandise on Arbor Gentry's shipping account. If any Product is damaged or lost and eligible for a claim from the carrier, Supplier is responsible for filing such claims directly with Arbor Gentry's carrier to recover cost of the Product within 30 days of loss and Arbor Gentry will be responsible for and file claims directly with Arbor Gentry's carrier to recover cost of transportation. If Supplier fails to file a claim with Arbor Gentry's carrier for eligible damaged or lost Products within 30 days of loss, Arbor Gentry may offset Supplier's payments for actual freight charges related to such shipment. Supplier shall record Arbor Gentry order numbers in the carrier reference number field for each tracking number. If Supplier fails to record valid Arbor Gentry order numbers in the reference number field, Arbor Gentry may refuse transportation charges and Supplier will be charged for and agrees to pay transportation.

- (2) **USE OF SUPPLIER'S CARRIER.** Supplier may elect to ship Products with a carrier of its choice and is solely responsible to said carrier directly for all shipping related charges. Supplier's carrier must offer expedited and trackable shipping. Whenever any Product(s) are damaged or lost, Supplier will file a claim with its carrier to recover cost of Product and freight. Whenever Supplier ships Product(s) with a carrier of its choice, Supplier will insure all Product(s) sold to Arbor Gentry, LLC, are at the Product(s) IMAP cost. Supplier agrees to file a claim with its individual carrier(s) at said IMAP price for Product(s) and will remit to Arbor Gentry, LLC, the cost of IMAP made from said Product(s), less Supplier's initial wholesale cost.

B. ADDITIONAL SHIPPING REQUIREMENTS.

- (1) Supplier shall ship and ship-confirm each order by the close of the following business day from receipt of the order, unless a longer time is permitted by Arbor Gentry in writing.
- (2) If Supplier is shipping less-than-truckload (LTL) using Supplier's carrier of choice:
- (a) Supplier's carrier must at least deliver to customer's nearest ground-level threshold entrance;
 - (b) Arbor Gentry may require Supplier's carrier to offer premium delivery for certain Products; and
 - (c) Supplier shall:
 - (i) Ensure all carrier's employees and/or subcontractors who come into contact with Arbor Gentry's customers and/or enter into their domiciles or premises (collectively referred to as "Carrier Personnel") will have passed a 5 panel drug test. Screening of all Carrier Personnel must be accomplished before reporting for their first day of work;
 - (ii) Ensure all Carrier Personnel passed a criminal background check, which at a minimum, must consist of the following: record search conducted by a qualified background check service provider, which includes a review of criminal court records of all counties of residence based on the individual's past 7 years of residential addresses. In no event will Supplier allow any carrier to assign Carrier Personnel whose background check reveals job-relevant adverse information or any other information indicating an unreasonable risk to property, safety, or welfare of individuals or the public when entering the residence or premises of any Arbor Gentry customer;
 - (iii) Ensure the following insurance policies covering services provided by its carrier are in effect: (a) commercial general liability coverage of at least \$1,000,000 per incident; (b) Worker's Compensation insurance coverage of at least \$500,000 aggregate and at least \$100,000 per accident; (c) automobile liability insurance on any vehicles used in delivery, installation and/or repair services of at least \$1,000,000 per incident for property damage and bodily injury combined. Each policy shall also meet the following requirements: (d) Arbor Gentry shall be included under the Standard Form Vendor's Endorsement or made an additional insured on said policy; (e) Arbor Gentry must be provided thirty (30) days written notice prior to the effective date of any decrease in coverage,

cancellation or amendment; and (f) A renewal policy must be in effect prior to expiration of any existing policy; and

- (iv) At Arbor Gentry's request, Supplier agrees to certify its compliance with subsections (a), (b) and (c) above, but as to subsections (a) and (b), certifications may be provided on an anonymous basis, i.e. without specific, identifiable disclosure of individualized information.

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RETURNS

A. **POLICY.** Arbor Gentry will not accept returns by consumers; hence, all sales are final, unless the item falls into one of the sections described below.

- (1) If Supplier supplies a defective, damaged or wrong Product, Supplier is responsible for all costs (freight, handling, coordination, replacement, etc.) related to the return of such Product; and
- (2) If a Product fails to ship within Supplier quoted lead-time, Supplier will be responsible for all costs and fees related to the cancelation or return. Arbor Gentry, LLC, reserves the right to cancel any item based on the above.

B. **REMEDY.** If Supplier has a return or cancelation per one of the above stated condition(s), Supplier agrees to file a claim, which will be made with its individual carrier(s) or insurance provider(s) at full face value or IMAP price of its Product(s), and will remit to Arbor Gentry, LLC, the cost of IMAP made from any claim of said Product(s). less Suppliers initial wholesale cost. If Supplier fails to ship or the above conditions are not applicable or Supplier does not have an applicable insurance policy to cover a failure to deliver, ship, or facilitate Product(s), Supplier will be responsible for a Fee from Schedule "A".

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TERMINATION

This Agreement shall continue unless terminated in the manner set forth below:

- A. **FOR CAUSE.** Either party may terminate this Agreement for Cause. Cause is defined as a material breach of the Agreement. If a party is in material breach of this Agreement, this Agreement may be terminated immediately by the non-breaching party, provided written notice of the breach has been given to the breaching party and breaching party has failed to cure said breach within thirty (30) days of written notice.
- B. **NOT FOR CAUSE.** Either Party may terminate this Agreement without cause upon 60 days prior written notice.

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INSURANCE

Supplier will obtain and maintain, at its expense, commercial general liability insurance (including products liability and/or umbrella coverage) in the amount of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate. Supplier shall add Arbor Gentry as an additional insured and will provide Arbor Gentry with certificates evidencing compliance. All policies will specify coverage and will not be decreased or terminated without at least 30 days prior written notice to Arbor Gentry.

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INDEMNIFICATION

Supplier will, at its own expense, indemnify, defend and hold harmless Arbor Gentry, its directors, officers, employees, contractors, representatives, affiliates, subsidiaries and agents and/or assignees (collectively, the Indemnified Parties) from and against all actions, losses, costs, fines, penalties, expenses, damages, claims or liabilities (including, without limitation, attorneys' fees) arising from or related to:

- (1) Claims of copyright, patent, trademark or other intellectual property right related to the Products;

- (2) Packaging, packing, tagging, labeling or advertising of such Products;
- (3) Failure to provide adequate warnings and/or instructions related to use, assembly, service or installation of such Products;
- (4) Any claim or cause of action anywhere in the world asserted against an Indemnified Party in connection with the Products or Vendor Materials (including, without limitation, any claim for product liability, breach of warranty, infestation, or infringement or misappropriation of any intellectual property rights, rights of privacy or publicity or any other proprietary rights of any third party);
- (5) Breach or alleged breach of your obligations under this Agreement, including but not limited to any breach of Customer Data or Warranties;
- (6) Negligent, willful or reckless acts or omissions, dishonesty or fraud by you, your agents, employees or representatives; or
- (7) Actual or alleged personal injury, death or property damage resulting directly or indirectly from the Products, performance of your obligations hereunder, or fault or negligence of you, your agents, employees or representatives (collectively "Claims").

An Indemnified Party will give prompt notice of any Claims to Supplier. An Indemnified Party may participate in the defense of any Claims by counsel of its own choosing, at its cost and expense. You will not settle any Claim without Indemnified Party's prior written approval. If a judgment is rendered against Arbor Gentry, Supplier agrees to promptly pay such judgment or appeal as permitted by applicable law.

A. **REPRESENTATIONS.** Supplier represents and warrants:

- (1) Full title to the Products, free and clear of all liens, charges and other encumbrances;
- (2) Supplier has obtained and will maintain all rights, approvals and consents necessary to perform your obligations and grant all rights and licenses to Arbor Gentry under the Agreement;
- (3) All documentation, images and copy provided to Arbor Gentry relating to Products are materially accurate. Arbor Gentry's promotion, display and distribution of the Products and Vendor Materials will not infringe or misappropriate any intellectual property rights, rights of privacy or publicity or any other moral or proprietary rights of any third party; and
- (4) Performance under the Agreement and all Products are and will be in compliance with all applicable laws, rules and regulations.

B. **PRODUCT.** Supplier warrants and affirms all Products are genuine, authentic and not counterfeit. Unless otherwise agreed in writing, Supplier warrants and affirms all Products are new, first-quality merchandise, free from material defects in workmanship and design and in the original manufacturers' packaging. Where Arbor Gentry permits Supplier to supply refurbished or reconditioned Products, such Products will be free from material defects in workmanship and design and their appearance and functionality will be in "like-new" condition. Packaging for refurbished or reconditioned Products must specify on the packaging such Products have been refurbished.

C. **RECALLS.** If a Product is subject to a recall (which includes safety notices) or other action required to bring the Product into compliance with applicable laws and/or Product documentation, Supplier will be responsible for all costs and expenses related to the said recall, notice or action, including recalling, shipping and/or destroying the Products and providing refunds or replacement Products. Arbor Gentry reserves the right to return all recalled Products.

- A. Supplier grants Arbor Gentry a nonexclusive, royalty free, worldwide license to use, reproduce, display, distribute, publish, adapt, modify and re-format all intellectual property associated with the Products such as images, photographs, text, copy, content, descriptions, submissions, video, audio, advertisements, and/or any other material submitted by Supplier to Arbor Gentry for use of any advertisement, display, promotion or sale of Products on Site.
- B. Notwithstanding anything to the contrary, nothing herein will prevent, impair or impede Arbor Gentry's right to advertise, promote or sell Products without a license or permission as permitted under applicable law (e.g., fair use and first sale doctrine under Copyright Law, referential use under Trademark Law, or a valid license from a third party).

- A. **CONFIDENTIAL INFORMATION.** While this Agreement is in effect, the Parties may exchange confidential Information, including information regarding a Party not generally known to the public. Each will treat such confidential Information as not only confidential, but proprietary both during this Agreement and for a period of 3 years after termination of this Agreement. Each Party agrees it will:
- (1) Not use confidential Information for any purpose other than performing obligations under this Agreement;
 - (2) Take reasonable precautions to maintain confidentiality of the said confidential Information; and
 - (3) Not disclose or otherwise furnish said confidential Information to any third party, other than such Party's employees who need to know the confidential Information to perform such Party's obligations under this Agreement, provided such employees are contractually obligated to such Party to maintain confidentiality of the other Party's confidential Information.

Each Party agrees to be responsible for violations of this clause by its employees and agents. Upon termination of this Agreement, each Party will return or confirm destruction of the other Party's confidential Information in their possession.

- B. **CUSTOMER DATA.** In the case of drop shipments from Supplier to an Arbor Gentry customer, Arbor Gentry will provide Supplier with such customer's shipping address and contact information (Customer Data). As between Arbor Gentry and Supplier, Arbor Gentry owns all right, title and interest in and to all Customer Data. Subject to terms of the Agreement, Arbor Gentry hereby grants Supplier a nontransferable, non-sub licensable, nonexclusive right to use the Customer Data solely to the extent necessary to deliver drop-shipments. Supplier agrees (a) not to collect, use or share Customer Data for any purpose other than to ship Products to Arbor Gentry customers; (b) establish and maintain adequate security measures to ensure security and confidentiality of Customer Data and notify Arbor Gentry of any actual or suspected breach of security involving such Customer Data; (c) Supplier use of Customer Data is at all times compliant with all applicable laws, rules, regulations and data privacy and security requirements; and (d) to delete Customer Data from Supplier data systems and other storage devices immediately upon fulfillment of the Order.

Arbor Gentry retains all rights and is the exclusive owner of all information regarding customers, including but not limited to customer names, addresses, telephone numbers, email addresses, purchase histories, payment methods and

browsing histories (Customer Information). Arbor Gentry retains all rights in its intellectual property (Arbor Gentry IP) and nothing herein will be construed as a transfer, license or sale of Arbor Gentry's intellectual property to Supplier. Supplier will not use, publish, display, disseminate or copy Customer Information or Arbor Gentry's IP without express, written permission. Except to fulfill Products as set forth in this Agreement, Supplier will not (nor will it cause a third party to) contact any customer without express written consent of Arbor Gentry.

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LIMITS ON LIABILITY

To the maximum extent permitted by applicable law, Arbor Gentry will not be liable for indirect, special, incidental, general, punitive or consequential damages of any kind (including, without limitation, loss of revenue, income or profits) arising out of or relating to this Agreement or any breach thereof (regardless of the form of action, whether based in contract, tort (including negligence), strict liability or otherwise), even if informed of the possibility of such damages in advance. Notwithstanding any other provision of this agreement, Arbor Gentry's entire liability under this agreement shall not exceed the amount actually paid by Arbor Gentry to you under the agreement in the twelve (12) months preceding any claim for damages.

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NOTICES

All notices, requests, demands and other communications required or given under this Agreement will be in writing and deemed to have been duly provided if hand-delivered or mailed by either registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service, receipt confirmed. In the case of notices via first-class mail or courier service, notices will be deemed effective upon the date of receipt. Notices shall be addressed to the parties as set forth below, unless either party notifies the other of a change of address in writing, in which case the latest noticed address will be relied upon:

Notice to Arbor Gentry:

Arbor Gentry, LLC
421 Hudson Street, Suite 203
New York, New York 10014

Notice to the Supplier:

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GENERAL PROVISIONS

- A. **RELATIONSHIP OF THE PARTIES.** Nothing herein shall be construed as creating or constituting the relationship of employer/employee, franchiser/franchisee, principal/agent, partnership, or joint venture between the parties. Neither Party has the authority to act on behalf of or bind the other.
- B. **GOVERNING LAW; JURISDICTION.** This Agreement will be governed by and interpreted under laws of the State of New York. Arbor Gentry and Supplier expressly consent and submit to the exclusive jurisdiction of the state and federal district courts in New York County, New York.
- C. **ENFORCEABILITY.** If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, such provision shall be more narrowly and equitably construed as necessary to become legal and enforceable, and the entire Agreement shall not fail on account thereof and the balance of the Agreement shall continue in full force and effect.
- D. **NO WAIVER.** The party entitled to the benefit thereof may waive any provisions of this Agreement. Neither party will be deemed, by any act or omission, to have waived any rights or remedies hereunder, unless such waiver is in

writing, signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event will not be construed as continuing or bar to or waiver of any other right or remedy or to a subsequent event.

- E. **FORCE MAJEURE.** Neither party will incur any liability to the other party on account of any loss or damage resulting from delay or failure to perform all or any part of the Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without negligence of the party whose performance has been delayed. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, failures of the Internet or technology systems over which a party hereto has no control, earthquakes, fire and explosions, but the inability of a party to meet financial obligations is expressly excluded.
- F. **RESERVATION OF RIGHTS.** Duties and obligations imposed by this Agreement and rights and remedies available hereunder will be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law except as otherwise provided herein.
- G. **ASSIGNMENT.** This Agreement will not be assigned by either Party without first obtaining the other Party's express written consent, which will not be unreasonably withheld; however, either Party may assign this Agreement, without obtaining the other party's express written consent, to (a) a successor corporation resulting from merger, consolidation, or non-bankruptcy consolidation, or purchaser of all or substantially all of such party's assets or majority or controlling interest in such party's voting stock, provided purchaser's net worth at the time of purchase is equal to or greater than that of such party, further providing purchaser is not a competitor of either party; and (b) a present or future subsidiary or affiliate. Any attempted assignment in violation of this Agreement will cause this Agreement to be null and void.
- H. **SURVIVAL.** Termination of this Agreement does not terminate vested rights of either party from any liabilities or obligations incurred under this Agreement prior to or which by their nature are intended to survive expiration or termination, including but not limited to provisions relating to confidentiality, indemnification, returns, and proprietary rights. Provisions of this Agreement relating to delivery of Products, payment of fees; right of offset; confidentiality; disclaimers; warranties; limitation of liability; indemnification; law; severability; and this Paragraph will survive any termination or expiration of this Agreement and remain in effect for no less than five years.
- I. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement, including any addenda, schedules or exhibits attached hereto, contains the entire Agreement between the parties with respect to the subject matter herein, supersedes all prior agreements, negotiations and oral understandings, if any, and will not be amended, supplemented, or modified in any way, except by amendment in writing, signed by authorized representatives of the parties hereto in the identical manner this Agreement was executed. No amendment will be affected by acknowledgement or acceptance of a purchase order, invoice, or other forms stipulating additional or different terms.
- J. **HEADINGS.** Headings used in this Agreement are for purposes of convenience and will not affect the legal interpretation of this Agreement.
- K. **TAXES.** Each Party agrees to pay, collect, calculate, remit and be responsible for its respective applicable sales, use, value-added, income, excise, privilege, property, transfer, franchise and any other taxes (Taxes) arising out of this Agreement. Arbor Gentry will collect, remit and pay Taxes to the appropriate taxing authorities only in those jurisdictions where legally required. Supplier agrees to indemnify, defend and hold Arbor Gentry harmless from any Tax imposed or assessed upon Arbor Gentry, which is legally payable, by Supplier.
- L. **COUNTERPARTS.** This Agreement may be executed contemporaneously in one or more counterparts, which will be deemed an original and each will constitute one and the same instrument.

SIGNATURES INTENTIONALLY WITHHELD ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates noted below.

Arbor Gentry, LLC.

Supplier: _____

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A TO SUPPLIER AGREEMENT

GENERAL COSTS & FEES. Schedule A is incorporated into the Supplier Agreement. Arbor Gentry may modify Schedule A any time upon 30 days written notice. If Supplier does not agree to any modification proposed to Schedule A, Supplier may terminate the Supplier Agreement in accordance with its terms.

DESCRIPTION	FEE
Failure to expedite an expedited order	\$20
Failure to ship a Product which results in cancellation ("Short-Ship")	\$75
Failure to transmit a valid tracking number to Arbor Gentry when any order is ship-confirmed	\$50
Failure to ship and ship-confirm a Product within Arbor Gentry's specified time frame	\$50
Monthly software maintenance fee	\$60 per month
If Supplier manages sales through a third-party interface	Cost incurred by Arbor Gentry on behalf of Supplier (Varies by 3 rd party)
Unauthorized accessorial charges	Actual Cost