



VENDOR TERMS AND CONDITIONS OF SALE

This vendor terms and conditions of sale (the "Agreement") made as of ____ day of _____, 2014 between Thing Daemon, Inc., a Delaware corporation d/b/a Fancy (the "Company"), and _____ (the "Vendor"), a _____ [AN INDIVIDUAL, LIMITED LIABILITY COMPANY, OR CORPORATION] whose address is _____. The Company and the Vendor may be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, the Company provides the services offered through its website, accessible at FANCY.COM, and applications for mobile devices;

WHEREAS, the Company is engaged in the sale of consumer goods throughout the world and wishes to purchase the Vendor's products for sale and distribution of products offered, displayed and promoted on its website or through its affiliates, vendors or independent contractors;

NOW, THEREFORE, in consideration of the mutual representations, covenants, obligations and agreements contained herein, the parties hereby agree as follows:

1. Purchase Orders; Pricing and Taxes. This Agreement governs all Company purchases of Products from Vendor, and is effective the earlier of (a) the date this Agreement is signed by both parties, or (b) the date Company first issued a purchase order (the "PO") that was accepted by Vendor (the "Effective Date"). "Product(s)" shall mean all goods, including labeling and packaging, provided to Company by Vendor. Company is not obligated to purchase Products, and Vendor is not obligated to sell products, until Vendor accepts a PO. POs shall not be valid or binding until signed by both Parties hereto and Company will not assume liability for a Product shipped prior to a PO's validity. In the event that that actual invoiced shipping expense exceeds one-hundred and five (105) percent of the shipping estimate listed on the PO, the Company may invoice the Vendor for the excess shipping costs. Vendor may not substitute products or combine or consolidate POs without Company's prior written consent. Documents that the Company signs, acknowledging receipt of Products do not constitute acceptance of the Products or waiver of any terms under this Agreement. Company may alter, amend or cancel its POs without penalty before Vendor delivers Products to the carrier. The PO provides Product prices, payment terms, excluding discounts or rebates. All PO shall be payable on NET 30 terms, unless otherwise stated. Prices include Vendor commissions and any other charges, unless otherwise noted. Vendor shall provide Company with one sample of each final Product for approval prior to delivery Products to the carrier. Except as otherwise provided in this Agreement, Vendor may charge Company any applicable taxes that Vendor is legally obligated to charge purchasers in connection with the sale of Products, so long as the tax amounts are stated separately on Vendor's invoice for the Products. If Vendor requests (or Company provides to Vendor) a resale certificate or similar document, for the state in which the Company purchasing affiliate is registered for sales and use taxes, then vendor shall not charge or collect from Company any taxes covered under such certificate. Vendor is responsible for other fees, taxes and duties, including any taxes Vendor may owe on payments Vendor receives under the Agreement, or any interest or penalties.

2. Product Images/Information. On an ongoing basis, Vendor will provide Company, free of charge, all current Product information, including electronic images and any Product information required by law to be disclosed in any sale or advertisement of the Product (the "Product Information"). Product Information also includes any Product information collected by Company from Vendor's website, or otherwise made available by Vendor (or by a third party at Vendor's direction) to Company. Vendor grants Company a non-exclusive, worldwide, perpetual, irrevocable and royalty-free license to: (a) use, copy and display the Product Information on or in connection with any website or mobile application (or other e-commerce channel); (b) convert to digital electronic form, excerpt, reformat, adapt or otherwise create derivative works of the Product Information; (c) convert to physical form for use on product inserts; (d) use all trademarks or tradenames included in the Product Information;

and (e) sublicense any of the foregoing rights. Unless otherwise requested by Company, Vendor shall include Company's tradename, logo and a link to FANCY.COM in the "Where-to-buy," "Online Retailers," "Store Locator," or similar section on its website(s) within 30 days of the Effective Date of this Agreement or the date of availability of the product on the Company's website, whichever is later.

3. Warranties. Vendor represents, warrants and covenants that: (a) the Products are genuine and free from defects; (b) all materials and other items incorporated into the Products are new (not refurbished or reconditioned), unless Vendor has received Company's prior written consent otherwise; (c) the Product Information is accurate and complete, and Company's exercise of its license rights in this Agreement will not violate any third party's rights; (d) Vendor will comply with all laws and rules relating to the Products, and the Products, Product Information and import documentation (if applicable) comply with all applicable laws and rules; (e) the Products may be lawfully marketed, sold and distributed worldwide without restriction (e.g., no required disclosures, licenses, or registrations) other than any specific restrictions or prohibitions disclosed by Vendor and consented to by Company in writing; (f) no Product contains ingredients that are regulated by U.S. Drug Enforcement Administration as a controlled substance or listed chemical; (g) no Products will be provided to Company that are subject to U.S. Department of Transportation regulations as hazardous materials without Company's prior written consent; and (h) no Products were produced, manufactured, assembled, or packaged by forced, prison or child labor (defined as age 15 or the minimum working age within the applicable jurisdiction, whichever is older). Upon acceptance of PO, Vendor shall notify Company of any warnings regarding product materials that are required to be disclosed by any applicable domestic and international laws, statutes, ordinances and/or regulations where the merchandise is offered for sale. If Vendor provides any Product to Company that is subject to the requirements of the Textile Fiber Products Identification Act, the Fur Products Labeling Act, or the Wool Products Labeling Act, then Vendor provides to Company the continuing guaranty set forth in Schedule 2 annexed to this Agreement.

4. Product Returns; Effect of Remedies; Product Recalls. Vendor shall deliver all Products specified in the PO to the Company's address identified on the PO (the "Distribution Center") no earlier than Start Ship Date and no later than one (1) day preceding Cancel Date as indicated in the PO. Company may refuse delivery, return at Vendor's expense and for a full refund and invoice Vendor for all actual, out-of-pocket, third party expenses associated with return, or accept delivery of Products and invoice, setoff, or demand payment from Vendor of \$1,500 (US) or two (2) percent of invoiced PO, whichever is greater, for any Product that arrives at the Distribution Center and: (a) is damaged or defective, (b) does not conform to agreed specifications or to samples, (c) is subject to recall, (d) was not ordered in the applicable PO, (e) has less than one year prior to expiration when delivered to Company, for Product with voluntary or required expiration date codes, (f) is past the Cancel Date, (g) contains Products that are damaged and defective which represent more than five (5) of the entire PO, (h) is lower than the amount specified on the PO, (i) contains a shipping label that varies from format or information as exactly specified in PO, regardless of signed receipt or carrier tracking confirmation of delivery; or (j) does not comply with this Agreement, including any warranties, representations or covenants made hereunder. In addition to remedies outlined above, if Company accepts delivery of the Products, the Vendor shall, at Vendor's sole expense, overnight any missing or replacement quantities or Products to the Distribution Center or may be subject to refund Company five (5) percent of the value of the PO within seven (7) business days of delivery, the value of which may be invoiced to the Vendor or setoff against any monies Company owes Vendor. Company acceptance of delivery at the Distribution Center shall not be prima facie evidence of satisfactory condition of Products or fulfillment of the PO. Title and risk of loss for all products returned under this Agreement will pass to Vendor upon delivery by Company to the carrier. Payment of an invoice does not limit Company's remedies. Company will inspect delivery of Products received from Vendor and will notify the Vendor of any defects within seven (7) business days. Vendor will provide Company immediate written notice of any recall. Vendor shall be responsible for costs Company incurs in a recall. In addition, in the event Company has in excess one-hundred and eighty (180) days of Product in inventory after the sale of such Product for ninety (90) days or more based on average daily sales during the prior ninety (90) day period, Company reserves the right to return to Vendor, at Vendor's expense, any excess Product, up to twenty (20) percent of PO, for a refund. Product on which there is a voluntary or required expiration date code must be received by Company with no less than 1 year of shelf life or such shorter amount of time as agreed to in writing by the parties.

5. Vendor Defense and Indemnification. Vendor will defend Company, its affiliated companies, and their respective officers, directors, employees, and agents (the "Company Parties" or individually a "Company Party") against any claim that arises, directly or indirectly, from: (a) any death of or injury to any person, damage to any property or any other damage or loss due to any defect in or use of any Product; (b) any Product recall; (c) any infringement or misappropriation of any proprietary right by Products, Product Information, or other content Vendor provides to Company, including, but not limited to claims of

patent or trademark infringement, or other violation of intellectual property rights, of third persons in connection with the production, design, sale, or use of any of the Products purchased by Company hereunder or the use of the trademarks, trade names, logos, or other intellectual property pertaining thereto; (d) Vendor's negligence, strict liability, intentional misconduct, or product liability, or similar theory in connection with the production, design, sale, or use of any of the Products purchased by the Company; (e) Vendor's breach of this Agreement or breach of any express or implied warranty; (f) Vendor's failure to state accurate Product descriptions, adequate warnings, or instructions (individually, a "Claim", and collectively, the "Claims"); or (g) any and all other claims and liabilities of every kind or character whatsoever arising out of, or related to, the production, design, sale, or use of the Products purchased by the Company hereunder, unless the same result solely from the Company gross negligence or knowing violation of law. Vendor will indemnify and hold harmless each Company Party against any liability, loss, damage, cost or expense (including reasonable attorneys' fees) incurred by that Company Party relating to any Claim, except to the proportional extent the liability is caused by the gross negligence or intentional misconduct of that Company Party as determined by a final, non-appealable order of a court having jurisdiction. Vendor will not consent to the entry of a judgment or settle without the Company prior written consent, which may not be unreasonably withheld. Vendor will use counsel reasonably satisfactory to the Company Parties, and the Company Parties will cooperate in the defense at Vendor's expense. If any Company Party reasonably determines that any Claim might have an adverse effect, that Company Party may take control of the defense at its expense (without limiting Vendor's indemnification obligations). Vendor's obligations under this Section 5 are independent of its other obligations under this Agreement.

6. Limitation of Liability. COMPANY IS NOT LIABLE TO VENDOR FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OPPORTUNITIES.

7. Shipping. Unless otherwise noted by written agreement between the Parties, Vendor shall deliver the Products to the Distribution Center and shall be responsible for all transportation costs. Transportation costs shall include all applicable taxes, customs duties, import/export duties, or similar tariffs or fees, customs clearance freight risks and insurance that may be required to pay or collect in connection with the performance of its obligations under, or in furtherance of, this Agreement. When Vendor pays for transportation, title and risk of damage or loss for the Products will pass to Company when Company accepts the Products from the carrier. Vendor shall be responsible for providing Company with common carrier traceable shipping information, including tracking number, upon shipment. When Company pays for transportation, Vendor will deliver the Products to the Company-designated carrier and title and risk of damage or loss for the Products will pass to Company when Vendor delivers the Products to the carrier. Any Company invoiced shipping expenses that are not pre-approved in writing shall be invoiced back to the Vendor at Company actual, verifiable, out-of-pocket expense. If Company is the importer of any Products, Company will prepare and submit all documents required to enter those Products into the United States, and will pay any additional fees or charges due to insufficient documentation. Vendor shall be the importer, at its expense, of any Products Company returns to Vendor to a location outside the United States.

8. Insurance. Vendor will comply with Schedule A.

9. Confidential Information. As used herein, the term "confidential information" includes all information and materials belonging to, concerning, used by, or in the possession of the Company relating to its products, processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, databases and trade secrets of every kind and character, including any and all services and work performed by Vendor for Company. For purposes of this Agreement, all information provided by Company shall be deemed confidential. Except as may be required by law or court order or to enforce the terms of the Agreement, Vendor agrees that any time following the execution of this Agreement, Vendor will: (a) protect Company's confidential information and information that reasonably should be considered confidential; (b) use this information only to fulfill its obligations under this Agreement; (c) promptly return to Company or destroy this information when this Agreement terminates; and (d) will not disclose to any person, firm, corporation or other entity confidential information of the Company. Section 9 covers all confidential information regardless of when Vendor receives it. Vendor will not, without the express written consent of the Company, use any trademark, service mark, commercial symbol, or other Company proprietary right; issue press releases or other publicity relating to Company or this Agreement; or refer to Company in promotional materials.

10. Restrictions. If Company indicates in writing to Vendor that Products ordered in the PO are intended for Company's subscription service, commonly known as "Fancy Box," or the PO contains an order for a quantity of one Product in an amount greater than 500 units, Vendor may not, within thirty (30) days of delivery to Company's Distribution Center or thirty (30) days

prior to the period in which Company intends to include the Product in the Fancy Box, whichever is later, or ninety (90) days after the Product is included therein, offer the Products for sale or at discounted retail price on any third-party retail, discount, sale or flash sale websites. "Retail Price" shall be measured by the manufacturer's suggested retail price (MSRP) at the time of Vendor's acceptance of the PO. If Vendor's breach of this Section is not cured within two (2) days of its receipt of written notice thereof, Company may, in addition to any remedies under law or this Agreement, invoice Vendor fifteen (15) percent of the subtotal of the PO applicable to the Product the value of which may be deducted from any current or future amounts owed by Company to Vendor.

11. Miscellaneous. Either party may terminate this Agreement with thirty (30) days' prior written notice, subject to Vendor fulfilling all POs it accepts before the effective date of termination. Unless otherwise stated under this Agreement, upon a Party's material breach of any provision contained hereunder, the other party may terminate this Agreement, provide that the non-breaching party provides ten (10) days' written notice to the breaching party and, if curable, the breach is not cured within such ten-day period. If either Party terminates this Agreement because of the other Party's uncured default, the non-breaching Party, in addition to all rights it has under this Agreement, shall have the right to exercise any and all remedies available at law or in equity. All rights and remedies are cumulative, and the election of one remedy shall not preclude another. Any termination shall be without prejudice to accrued rights. The provisions of this Agreement shall survive termination of this Agreement, including, but not limited to, representations, warranties, the Product Information license, indemnification, insurance, confidentiality, payment obligations, choice of law and jurisdiction, and remedies. Each party represents and warrants to the other that (a) it has the full power to enter into this Agreement and to perform its obligations hereunder, (b) this Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, and (c) this Agreement does not contravene, violate or conflict with any other agreement of such party. Nothing contained herein will be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party will have the right, power or authority to bind or create any obligation, express or implied, on behalf of the other party. During the term of this Agreement, or for one year thereafter, each party shall not make any public statements disparaging the other party, its products or services. This Agreement is governed by New York state law, without reference to any applicable conflict of laws rules or the Convention on Contracts for the International Sale of Goods. Vendor irrevocably consents that any controversy, dispute or claim arising out of or relating to this Agreement shall be settled by arbitration without right of appeal to the courts, by a single arbitrator who is satisfactory to both the parties, whose costs shall be shared by the Parties, and administered by the American Arbitration Association in accordance with the laws of the State of New York and the rules of the American Arbitration Association under its Commercial Arbitration Rules then in effect. Any judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In addition to legal remedies arising out of any breach of this Agreement, the Vendor recognizes that the Company may be irreparably damaged by any breach of the noncompetition and confidentiality provisions of this Agreement and that the Company shall be entitled to seek an injunction, specific performance, or other equitable remedy to enforce such provisions. Company's estimates or forecasts are non-binding. Any Company affiliate may issue a PO under this Agreement, and POs are the separate obligation of the affiliate that issues the PO. Vendor will not assign this Agreement, or any obligation or right (including any right to payment) in the Agreement, without Company's prior written consent. Company may either withhold and setoff, or demand payment of, any sums Vendor owes to Company, including any taxes that Company is legally required to withhold from amounts Company pays to Vendor. Company may conduct a reasonable audit of Vendor's records related to this Agreement. If Vendor does not respond within a reasonable period after receiving an audit claim, Company will deduct the claim from Vendor's next remittance. Any notice under this Agreement must be delivered by certified mail (return receipt requested), nationally recognized overnight courier service, electronically receipted facsimile transmission, or personal delivery to a party at the addressee(s) set forth in the signature blocks below. The parties' rights and remedies under this Agreement are cumulative. The captions or headings of the Sections of this Agreement are for reference only and are not to be construed in any way as part of this Agreement. Either party's failure to enforce any provision will not be a waiver of the party's rights to subsequently enforce the provision. If any provision is held to be invalid, then that provision will be modified to the extent necessary to make it enforceable, and any invalidity will not affect the remaining provisions. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties, and such agreement must be in writing and signed by both Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature. Vendor may use standard business forms or other communications (such as invoices, confirmations or shipping documents), but use of these forms is for convenience only and will not alter or supersede the provisions of this Agreement. This Agreement is the entire agreement between Company and Vendor for the purchase and sale of Products, and supersedes all prior agreements and discussions.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

THING DAEMON, INC.

VENDOR

By: _____

By: _____

Name: _____

Title: _____

Andrew Tuch
General Counsel

Company Notice Information:

Thing Daemon, Inc.
Attn: General Counsel
96 Spring Street, 5th Floor
New York, NY 10012
e: tuch@fancy.com
p: 617-877-7445

Vendor Notice Information:

Name: _____

Address: _____

e: _____

p: _____

SCHEDULE A – INSURANCE

1. If Vendor provides to Company any Product other than books, music, video, DVD, videogames or software, then Vendor shall obtain and maintain, at its expense, commercial general liability insurance coverage (which must include products liability coverage) of at least (1) million dollars per occurrence and two (2) million dollars aggregate. However, if the Products include any Specified Products (as defined below), then the limits of Vendor's insurance coverage shall be at least one (1) million dollars per occurrence and five (5) million dollars aggregate. Vendor shall maintain its insurance coverage for at least twelve (12) months after the expiration or termination of this Agreement. "Specified Products" means: children's or infant's clothing and/or sleepwear, excluding shoes; baby carriages, walkers and strollers; scooters, mini- bikes, mopeds, tricycles, wagons and other ride-on toys; all-terrain vehicles; children's sports and hobby equipment; electric trains, cars, and related accessories; projectile or flying toys; toy chests and boxes; BB guns, BBs and pellets (gas, air or spring loaded) and similar Products; automotive brakes and related accessories; seasonal decorations; perishable consumable Products; over-the-counter medications; medical devices and health-care equipment; power tools, including welding and soldering tools; alarms and escape equipment; heating Products (including stoves, heaters, furnaces) and accessories; indoor or outdoor lighting Products and accessories; power lawn and landscaping equipment (including lawn mowers and chain saws); automatic doors and door openers; fertilizers, pesticides and chemicals; life safety equipment for recreational sports and activities; and inflatable Products for water skiing, tubing and surfing.
2. Vendor's required minimum limits of insurance may be satisfied by any combination of primary and excess/umbrella liability insurance policies. Each of these policy coverages shall be primary and non-contributory to any such coverage carried by Company. Vendor will name "Company, Inc. and its affiliates and their respective officers, directors, employees and agents" as additional insureds on each insurance policy required by this Schedule and will provide Company with thirty (30) days' advance notice of cancellation, significant modification or expiration of each policy.
3. Within thirty (30) days after the effective date of this Agreement (and at each policy renewal thereafter), Vendor will provide a certificate of insurance for each insurance policy required by this Schedule to Company. Company's approval of Vendor's insurance does not relieve Vendor of any obligations, including but not limited to its defense and indemnity obligations, even for claims over Vendor's policy limits. If Vendor fails to perform any of its obligations in this Schedule, Company may withhold payments owed to Vendor until Vendor meets these obligations.

SCHEDULE B – GUARANTY

1. Vendor guaranties that all textile fiber, fur or wool Products now being sold or which may hereafter be sold or delivered to Company are not, and will not be misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act, the Fur Products Labeling Act, the Wool Products Labeling Act, and the rules and regulations under any of these acts. This guaranty is effective until the termination date of the Agreement. As of the effective date of this Agreement, the person executing the Agreement on behalf of Vendor certifies under penalty of perjury that: (a) the statements in this Schedule 2 are true and correct; and (b) he or she is an officer of Vendor who is authorized to bind Vendor to this guaranty.