

## VENDOR TERMS AND CONDITIONS

**THESE VENDOR TERMS AND CONDITIONS**, together with any Purchase Orders (defined in Section 1 below) issued by Zulily, LLC ("**Zulily**"), located at 2601 Elliott Avenue, Suite 200, Seattle, WA 98121, and all Vendor Policies (defined in Section 2 below) and such other written policies and specifications as Zulily may provide from time to time (collectively, the "**Agreement**"), shall govern and control all matters arising from or relating to Zulily's relationship with any person or entity (each a "**Vendor**") who may offer for sale or sell any goods or services ("**Goods**") to Zulily. Zulily and Vendor are each referred to in this Agreement individually as a "party" and together as the "parties".

BY REGISTERING FOR OR USING ZULILY'S VENDOR PORTAL (DEFINED IN SECTION 2 BELOW), ACCEPTING A PURCHASE ORDER FROM ZULILY, OR SHIPPING GOODS PURSUANT TO A ZULILY PURCHASE ORDER, VENDOR ACCEPTS AND AGREES TO ALL TERMS AND CONDITIONS OF THE AGREEMENT. ANY PERSON OR ENTITY WHO REGISTERS FOR OR ACCESSES ZULILY'S VENDOR PORTAL ON VENDOR'S BEHALF HEREBY REPRESENTS AND WARRANTS THAT THEY ARE EXPRESSLY AUTHORIZED TO BIND VENDOR TO THIS AGREEMENT.

1. **ZULILY OBLIGATIONS.** Zulily may purchase Goods from Vendor and provide related services necessary to offer the Goods for sale (the "**Offer**"). All aspects of the Offer or any other sale of the Goods shall be within Zulily's exclusive control. Any purchase of Goods by Zulily will be made by issuing a written purchase order describing the specific Goods intended for purchase (each, a "**Purchase Order**"). Zulily is not obligated to purchase any Goods from Vendor unless and until Zulily issues a Purchase Order to Vendor. Nothing in the Agreement or otherwise obligates Zulily to any minimum purchase or future purchase of any Goods from Vendor.
2. **VENDOR OBLIGATIONS.**
  - a) **Inventory.** Vendor will hold a sufficient quantity of the Goods identified on Zulily's Vendor Portal website at <https://portal.zulily.com/> ("**Vendor Portal**") or otherwise communicated to Zulily by Vendor, as required to ship all Goods immediately upon receipt of a Purchase Order from Zulily. Vendor shall not post a quantity of Goods for sale to the Vendor Portal or otherwise approve a quantity of Goods for sale unless it has an equivalent quantity of goods in its possession, in the same style and stock keeping unit ("**SKU**") as the goods posted to the Vendor Portal or otherwise communicated to Zulily.
  - b) **Shipment of Goods.** Timely delivery of the Goods is of the essence. Upon receipt of a Purchase Order, Vendor will ship all Goods within two (2) business days of Zulily's issuance of the Purchase Order. For any Goods Vendor is drop shipping, Vendor shall provide shipment notification and tracking information to Zulily at time of shipment. If Vendor does not timely ship the Goods, unless otherwise agreed to in writing by Zulily, and in addition to all other remedies available under this Agreement or applicable law, Zulily may cancel the Purchase Order and has no obligation to Vendor to pay for the cancelled Goods or any of Vendor's costs associated therewith.
  - c) **Packaging and Shipping.** Goods shall be packed and secured in such a manner as to reach the destination in good condition under normal conditions of transport. Vendor shall comply with (i) all requirements specified in Zulily's Shipping & Routing Guidelines ("**Routing Guide**"), as published on Zulily's Vendor Portal and as may be amended by Zulily from time to time, (ii) all applicable laws, regulations, carrier tariffs, and classification related to packing and shipping, and (iii) any additional rules and procedures established by the commercial carrier chosen by Zulily for the shipment.
  - d) **Samples.** Vendor will provide samples of Goods ("**Samples**") without charge in the amount and style requested by Zulily prior to the Offer. Vendor will pay all cost of shipping Samples and agrees Samples will not be used to fulfill Purchase Order quantities. Samples must be of the same quality and appearance, including color, design, fabric and style, as the Goods shipped pursuant to any Purchase Order. Samples remain the property of Vendor at all times and, unless otherwise agreed by the parties, Vendor instructs Zulily to donate or destroy all Samples after Zulily completes its use of the Samples.
  - e) **Excess or Substitute Items.** Vendor will fulfill and ship only those Goods in the quantities specified on each Purchase Order. Unless agreed to in writing by Vendor and Zulily, no additional or substitute items will be shipped. Zulily may, in its sole discretion, return or dispose of at Vendor's expense any additional or substitute items that are shipped to Zulily without Zulily's prior express written consent.
  - f) **Inspections.** Upon reasonable notice (including by email), Zulily has the right to have its representatives visit Vendor's premises, or, where applicable, the premises of Vendor's manufacturer, for quality assurance purposes and to conduct compliance or other inspections, audits, and investigations reasonably necessary to ensure that Vendor's production, testing, storage, and shipping of Goods comply with this Agreement; provided that such activities will not unreasonably interfere with Vendor's or Vendor's manufacturer's operations, as applicable. Vendor will cooperate and cause its manufacturer to cooperate in any such inspection, audit, or investigation and with any corrective action plan required by Zulily. Vendor shall notify Zulily immediately upon any change to the Vendor's premises and, where applicable, the premises of Vendor's manufacturer.

- g) **Trainings.** Upon reasonable notice (including by email), Zulily, in its sole discretion, may require Vendor to complete a training session or sessions (live or online) of not more than half an hour each related to Vendor's obligations under this Agreement; provided that such training will not unreasonably interfere with Vendor's or Vendor's manufacturer's operations, as applicable. Vendor will cooperate in coordinating any such training.
- h) **Zulily Product Reviews.** Vendor shall not, directly or indirectly, make or cause to be made any reviews of its Goods on Zulily's website or Zulily social media sites.
- i) **Publicity.** Vendor will not issue a press release or publicity relating to Zulily, this Agreement, or any Vendor events without Zulily's prior written consent. Additionally, Vendor will not list Zulily or use Zulily's name, logo, or other intellectual property in any brochures, advertisements, client lists, or other promotional materials without Zulily's prior written consent. Notwithstanding the foregoing, if Vendor currently has an event live on Zulily, Vendor may promote that event, reference Zulily (without use of Zulily's logo or other intellectual property), and provide a link to the event on its social channels, subject to the other terms of this Agreement.
- j) **Vendor Policies.** Vendor agrees to, is bound by, and will follow all terms, policies, and other specifications published by Zulily and made available to Vendor through the Vendor Portal (collectively, "**Vendor Policies**"), including the Routing Guide and the Vendor Code of Conduct. Vendor acknowledges and agrees that Zulily may revise the Vendor Policies (including by posting new policies) from time to time in Zulily's sole discretion. Any revisions to the Vendor Policies will become effective thirty (30) days after such revisions are posted to the Vendor Portal unless a different effective date is provided in the revised policy. If any revision to the Vendor Policies is unacceptable to Vendor, Vendor's sole recourse and remedy is to terminate the Agreement as provided herein.
3. **LOGISTICS CONTACTS.** Each party shall appoint and have in place a logistics point of contact responsible for managing the respective party's obligations in the Purchase Order.
4. **TITLE AND RISK OF LOSS.** Title to the Goods shall not transfer to Zulily until the Goods are received and accepted by Zulily at its designated fulfillment center (or, in the case of drop shipment, until the Goods are received and accepted by the designated customer). Notwithstanding any agreement by Zulily to pay freight or other transportation charges, the risk of loss or damage to Goods in transit shall be borne by Vendor. Vendor will insure the Goods against all risks of loss prior to delivery and promptly pursue all shipping carrier claims relating to loss or damage occurring while the Goods are in transit.
5. **INVOICING AND PAYMENT.** Upon receipt of a Purchase Order, Vendor agrees to contact Zulily with any discrepancies within two (2) business days. Vendor shipment of any Goods pursuant to a Purchase Order constitutes Vendor's acceptance of that Purchase Order. Unless different payment terms have been approved and documented in a writing signed by Zulily, Zulily will pay Vendor all undisputed amounts for Goods sold to Zulily within sixty (60) days after title to the Goods has transferred to Zulily or Zulily's receipt of an invoice from Vendor, whichever is later. If Vendor does not dispute the amount of Zulily's payment of an invoice (including any amounts setoff or withheld) within ninety (90) days after such payment, Vendor expressly agrees that the payment amount shall be deemed final, and Vendor may not otherwise challenge or object to such payment amount or otherwise seek further payment in connection with the Goods listed on the invoice. Vendor will use the Vendor Portal to obtain all relevant information about and to dispute any Purchase Order, Goods received by Zulily, and amount of any payment by Zulily. If any invoice is necessary as determined by Zulily and the Vendor, Vendor will invoice Zulily only for Goods received by Zulily as authorized in the Purchase Order. Vendor's invoice shall reflect the prices shown in the Purchase Order and no additional charges shall be added by Vendor without Zulily's prior written consent. Invoices shall include: Unique invoice number and date, ship date, remittance address, purchase order number, payment due date, item description, price, and quantity shipped. If Vendor has Electronic Data Interchange ("**EDI**") capabilities, invoices shall be submitted to Zulily using EDI, but only if the EDI is compatible with Zulily's invoice payment system. Otherwise, Vendor shall submit invoices via the Vendor Portal. Vendor will also provide Zulily with any requested tax information, including Forms W-9 or W-8BEN. During the term of this Agreement and for one year after its termination, Zulily may request and Vendor will provide copies of records reasonably necessary to verify any transactions or activities related to this Agreement. If Vendor does not respond within a reasonable period after receiving a records request, Zulily may deduct any amount reasonably believed to be due from amounts Zulily pays to Vendor.
6. **CHARGEBACK POLICY.** Vendor acknowledges that each item ordered through a Purchase Order represents a Zulily customer order. If Vendor is unable to fulfill a Purchase Order completely or unable to ship items within the agreed upon shipping timeframe, Zulily may issue a chargeback to Vendor as provided in the Routing Guide, in addition to any other remedy identified in this Agreement or otherwise available to Zulily.

## 7. **TERM AND TERMINATION.**

- a) **Term.** This Agreement shall remain in effect until terminated by either party as set forth in this Agreement ("**Term**").
- b) **Termination.** Either party may terminate this Agreement for convenience upon thirty (30) days' written notice to the other party. Either party may immediately terminate this Agreement for cause if the other party is in material breach of this Agreement and has failed to cure that breach within 10 days after written notice thereof. Additionally, Zulily may terminate this Agreement for cause immediately upon written notice to Vendor if Vendor: (i) makes an assignment in violation of Section 15(e); (ii) ceases or threatens to cease to carry on its business, liquidates or dissolves its business, or disposes of a substantial portion of its assets; (iii) becomes or is likely to become insolvent, makes an assignment for the benefit of creditors, or fails generally to pay its debts as they become due; (iv) voluntarily or involuntarily becomes the subject of any proceeding relating to bankruptcy, insolvency, receivership, liquidation, or other similar proceeding; or (v) breaches or allegedly breaches any of its representations or warranties set forth in Section 9(b)(iv). Either party may terminate this Agreement as permitted under the Agreement without prejudice to any other right or remedy.
- c) **Effect of Termination.** Upon termination or expiration of this Agreement, (i) Zulily's rights under Section 8 will survive with respect to Goods that Zulily may sell; (ii) the rights and obligations of the parties under Sections 2(f), 5, 6, 7(c), 9, 10, 12, 13, 14 and 15 will survive; and (iii) Vendor will destroy and delete, and procure the destruction and deletion of, retain no copies of, all Zulily Confidential Information (defined in Section 14 below) received by Vendor pursuant to or in connection with this Agreement unless Zulily requests return of such Zulily Confidential Information rather than destruction and deletion. Vendor shall certify in writing to Zulily that Vendor has complied with its obligations under Section 7(c)(iii) within 30 days after receipt of Zulily's request for such certification.

8. **LICENSE.** Vendor represents and warrants that it owns and is authorized (whether by license or otherwise) to promote, market, and sell the Goods to Zulily for advertising and resale to Zulily's customers. Vendor hereby grants to Zulily and Zulily's Affiliates a perpetual, irrevocable, worldwide, non-exclusive, royalty-free right and license to (a) adapt, display, use, copy, distribute, perform, transmit, broadcast, and create derivative works of all trademarks, trade names, service marks, logos, copyrighted materials, product information, warranties, warnings required by law to be disclosed in any sale or advertisement of the Goods, and other information, advertising, or content supplied or made available by Vendor relating to the Goods (including any blog posts, social media, email communications, and media) in connection with the Offer or Zulily's sale of the Goods, and (b) sublicense any of the foregoing rights to third parties in connection with Zulily's programs and services, the Offer, or Zulily's sale of the Goods (for example, to advertise the Goods). Except for the rights and license granted herein, Vendor retains all proprietary rights in and to all of its intellectual property. Zulily retains all proprietary rights in and to (a) all of Zulily's intellectual property, including its name and all derivatives thereof, trademarks, logos, and all business information of any kind that is generated by or accessible through Zulily's desktop and mobile websites and mobile applications (collectively, "**Site**") and the Vendor Portal, (b) any services provided by Zulily hereunder (including all software, source codes, modifications, updates and enhancements thereof or any other aspect of its systems related to the Site, the Vendor Portal or other business operations of Zulily), and (c) all original content and photographic images created by Zulily for the purpose of offering Vendor's Goods for sale. No implied licenses are granted herein.

## 9. **REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION.**

- a) **Mutual Representations and Warranties.** Each party represents and warrants that (i) it has full power and authority to enter into this Agreement; and (ii) its entrance into and performance of this Agreement does not violate, conflict with, or result in a material default under any other contract or agreement to which it is a party, or by which it is bound.
- b) **Vendor's Representations and Warranties.** Vendor further represents and warrants that:
  - (i) all Goods delivered (A) are identical in appearance and equal in quality to Samples and/or product images submitted to Zulily; (B) are free from defects in design, material, construction and workmanship; (C) are fit for the particular purpose for which such Goods ordinarily are used; (D) present no risk of damage to property or injury, harm or illness to any person when used for their intended purpose; (E) do not infringe upon the intellectual property rights of any third party; (F) do not infringe on any person's right of privacy or publicity; and (G) comply with all other requirements in this Agreement;
  - (ii) Vendor (A) owns, or is an authorized licensee of the owner of, all brands, trademarks, patents, designs, copyrighted images or other intellectual property depicted on or represented by the Goods; (B) has obtained appropriate model and property releases and is authorized to grant the rights and license set forth in Section 8 for any content or images it provides to Zulily; (C) has granted Zulily

sufficient rights through Section 8 to permit Zulily's promotion and resale of the Goods without infringing upon the intellectual property or other rights of any third party; and (D) will promptly address, defend, and attempt to resolve in good faith any allegations of infringement asserted against Zulily relating to the Offer or Zulily's sale of the Goods;

- (iii) all Goods comply with applicable federal, state, provincial, and local laws, statutes, rules, regulations, ordinances, and orders, including (A) laws, rules or regulations preventing transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such as dumping, promulgated by the United States or other jurisdictions to which the Goods are shipped, and (B) laws, rules, regulations, and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration, and intended use (including all applicable FDA rules and regulations, in particular related to labeling and ingredients, and all equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the country-of-origin marking and care labeling requirements of Section 304 of the Tariff Act of 1930, as amended, the Wool Products Labeling Act, Textile Fiber Products Identification Act, Lanham Act, Hazardous Substances Labeling Act, Flammable Fabrics Act, Food, Drug & Cosmetics Act, Consumer Product Safety Act, the Consumer Product Safety Improvement Act, The Safe Drinking Water and Toxic Enforcement Act of 1986, as amended ("**Proposition 65**"), Federal Trade Commission Act, FTC Guidelines, Trade Practice Rules and Regulations, the United States Consumer Products Safety Commission rules and regulations, and the California Air Resources Board 93120 standard; Vendor also represents and warrants that all Goods containing electrical components shall be listed by either the Underwriters Laboratories, Inc. or by ETL SEMKO in compliance with applicable electrical codes, and that all Goods which are subject to the provisions of applicable state bedding and furniture laws shall conform to the provisions of such laws; Vendor shall provide and make available to Zulily a Children's Product Certificate or Certificate of Conformity pursuant to the United States Consumer Product Safety Act for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement and shall maintain all relevant testing documents in accord with all applicable laws and regulations;
- (iv) Vendor and anyone acting on its behalf will comply with all applicable laws, including all applicable anti-bribery/anti-corruption laws (for example, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act), and will not give, offer, agree or promise to give, or authorize the giving, directly or indirectly, of any money or other thing of value to anyone as an inducement or reward for favorable action or forbearance from action or the exercise of influence, or for any other improper advantage. Vendor and anyone acting on its behalf is and will remain in compliance with all laws administered by the Office of Foreign Assets Control and any other applicable economic sanctions and trade embargoes against designated countries, entities, and persons (collectively, "**Embargoed Targets**") by a governmental authority (collectively, "**Economic Sanctions Laws**"); Vendor is not an Embargoed Target or otherwise subject to any Economic Sanctions Laws, and Vendor will not directly or indirectly export, re-export, transship, or otherwise deliver the Goods or any portion of the Goods to an Embargoed Target or broker, finance, or otherwise facilitate any transaction, in violation of any Economic Sanctions Laws;
- (v) Vendor shall assist Zulily in its compliance with Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and its implementing regulations, including timely response to information requests from Zulily or its authorized agents regarding the use and source of conflict minerals in its Goods;
- (vi) Vendor will comply with, and, regardless of the size of Vendor's organization, will be responsible for compliance with Proposition 65, including (A) providing Zulily with a warning that meets the requirements of Proposition 65 for all required Goods, (B) providing the Proposition 65 warning statement to Zulily during the set-up process for the Goods or Offer approval process, (C) providing immediate notification to Zulily through the Goods set-up or Offer approval processes of any changes made to the Goods that trigger a Proposition 65 warning requirement, even if the Goods previously went through the set-up process, and (D) labeling all Goods in accordance with Proposition 65, regardless of whether Zulily is acting as the importer of record;
- (vii) in the event both parties agree to the sale of Goods in Canada, such Goods comply with applicable federal, provincial, and local laws, statutes, rules, regulations, ordinances, and orders, promulgated by Canada or other jurisdictions to which the Goods are shipped, including (A) laws, rules or regulations preventing transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such as dumping, and (B) laws, rules and regulations and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration and intended use (including all applicable Health Canada rules and regulations and equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the country of origin markings under the Customs Act, the Textile Labelling Act, the Technical Standards and Safety Act, the Food and Drugs Act Canada, the Canada Consumer Product Safety Act, The Hazardous Products Act, the Federal Competition Act, the Consumer Packaging and Labelling Act

(Canada), and the rules and regulations of Health Canada's Consumer Product Safety Directorate; Vendor shall provide and make available to Zulily a certificate that the Goods have been tested according to, and meet the requirements of, the Canada Consumer Product Safety Act for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement, as required by the jurisdiction to which the product is shipped, and Vendor shall maintain all relevant testing documents in accord with all applicable laws and regulations;

- (viii) in the event both parties agree to the sale of Goods in Mexico, such Goods comply with applicable federal, state, or local laws, statutes, rules, regulations, ordinances, and orders, promulgated by Mexico or other jurisdictions to which the Goods are shipped including (A) laws, rules or regulations preventing transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such as dumping, and (B) laws, rules and regulations and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration and intended use (including applicable rules promulgated by the Protection Federal Agency of the United Mexican States ("PROFECO") and the Mexican Health Ministry, and all equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the labelling requirements under Norma Oficial Mexicana ("NOM") (Official Mexican Standard) NOM-001-SCFI-1993, Electronic appliances – safety requirements and test methods for household electronic appliances powered by different sources of electricity, NOM-004-SCFI-2006, Commercial Information - Labeling of Textiles, Clothing, Accessories and Blancos, NOM-015-SCFI-2007- Commercial - labeling information for toys, NOM-020-SCFI-1997, Commercial Information – Labeling of hides and leathers cured naturally and synthetic or artificial materials with that appearance, footwear, leather goods, as well as the products prepared with said materials, NOM-024-SCFI-2013, Commercial Information for packaging, instructions and guarantees of electronic, electric and electrical domestic products, NOM-030-SCFI-2006, Commercial Information – Declaration of quantity on label, NOM-050- SCFI-2004, Commercial Information – General Labeling of products, PROY-NOM-141-SSA/SCFI-2012, Labelling of Pre-Packaged Cosmetic Products, Health and Commercial Labelling; Vendor shall provide and make available to Zulily a certificate that the Goods have been tested according to, and meet the requirements of, all applicable NOMs for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement, as required by the jurisdiction to which the product is shipped, and Vendor shall maintain all relevant testing documents in accord with all applicable laws and regulations; Compliance with these regulations is solely Vendor's responsibility;
- (ix) all Goods (A) are accurately described in Vendor-approved copy and promotional content provided to Zulily by Vendor, (B) fully comply with the claims and labeling set forth thereon and relating thereto, and (C) fully comply with statements, claims and warranties made by Vendor with respect to such Goods; and all such copy, promotional content, statements, labeling, claims and warranties associated with the Goods fully comply with all applicable advertising or other laws or regulations;
- (x) Vendor has received, read, and will comply with the requirements set forth in the Routing Guide, Vendor Code of Conduct, all other Vendor Policies, and the Vendor Portal Terms of Use, and will access and use the Vendor Portal, as required by Zulily, solely for the purposes of fulfilling its obligations to Zulily under this Agreement;
- (xi) all Goods comply with any laws, rules or regulations of both the country of manufacture and the United States governing wages (including the Fair Labor Standards Act) and the use of child labor, slave labor, and human trafficking, and/or governing the importation into the United States of merchandise produced with child labor, slave labor, and that no prison labor or human trafficking is utilized in the production of any Goods;
- (xii) Vendor will provide Zulily with an accurate suggested retail price for the Goods, based on (A) both the genuine price offered elsewhere, and actual sales at that price, for identical goods, or (B) comparable goods of similar quality and construction, to enable Zulily to establish an accurate point of reference for the discounted pricing Zulily offers to customers;
- (xiii) except as Vendor has specifically informed Zulily in writing, the Goods are not classified as hazardous materials, do not require any special storage conditions, are intended to be stored in a warehouse at room temperature, are not perishable, and do not have a limited shelf-life;
- (xiv) except as Vendor has specifically informed Zulily in writing, all Goods are eligible for shipment using standard commercial carriers without any special permissions or approvals or special handling instructions;
- (xv) Zulily's customers have the right to rely on these warranties and representations and enforce the same as against Vendor; and
- (xvi) if the Goods include items related to child or infant safety, including strollers, cribs, child car seats and carriers, and any such Goods are returned to Zulily by consumers for reasons other than their failure to

meet safety requirements, Vendor will accept the return of any such item from Zulily to recertify their safety prior to any subsequent sale.

- c) **Indemnification.** Each party (each, an “**Indemnifying Party**”) shall investigate, defend, indemnify, and hold harmless the other party and its officers, directors, employees, agents, sublicensees, and subcontractors (each, an “**Indemnified Party**” or collectively “**Indemnified Parties**”) from and against any third party claims, damages, liabilities, penalties, interest, fines, losses, costs and expenses, including reasonable attorneys’ fees (each a “**Claim**”, and collectively, the “**Claims**”), incurred by an Indemnified Party arising out of or relating to: (i) any breach of this Agreement or the Indemnifying Party’s obligations, representations, or warranties set forth herein; or (ii) the negligence or willful misconduct of the Indemnifying Party or any of its employees, personnel, or agents. Additionally, Vendor shall also defend, indemnify, and hold the Zulily Indemnified Parties harmless from Claims arising out of or relating to: (iii) any actual or alleged infringement, misappropriation, or misuse of any third-party rights, including intellectual property rights, relating to any Goods or any information or content supplied by Vendor in connection with the Goods; (iv) any actual or alleged defect in any Goods; (v) any actual or alleged illness, injury, or death to person or damage to property arising out of the furnishing, use, or performance of the Goods; (vi) a recall of the Goods under Section 10; (vii) any actual or alleged issue with the Goods for which Zulily is strictly liable; or (viii) any failure by Vendor to provide complete, truthful, and accurate information and content about the Goods. An Indemnifying Party’s obligations under this Section are conditioned on (i) the Indemnified Party promptly providing notice in writing of the Claim; and (ii) the Indemnifying Party being given primary control of, and all reasonably requested assistance (at the Indemnifying Party’s cost) for the defense of any such Claim (with counsel reasonably satisfactory to the Indemnified Parties), if it has accepted the obligation to indemnify without reservation, provided that no settlement requiring admission of any liability or wrongdoing, or any action or forbearance on the part of the Indemnified Party shall be entered into without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld or delayed. If the Indemnifying Party has reserved any rights with respect to indemnity and/or defense, fails to timely act, or if the Indemnified Party reasonably concludes that the Indemnifying Party has conflicting interests or different defenses available with respect to such Claim or Claims, the Indemnified Party may retain independent counsel to defend against the Claims at the Indemnifying Party’s expense.

Notwithstanding anything to the contrary in this Section, in the event Zulily is the Indemnified Party, Zulily may, at its sole option, elect to either (i) retain separate counsel of Zulily’s own choosing who shall have primary control over defense of the matter and be paid for by the Indemnifying Party on an ongoing basis every thirty (30) days; or (ii) tender its defense directly to the Indemnifying Party as set forth above. In either event, upon receipt or notification of a Claim for which Zulily is the Indemnified Party, Zulily may withhold or suspend all or a portion of any payments due to Vendor under this Agreement or under any Purchase Order in an amount reasonably sufficient to satisfy Vendor’s indemnification obligation for that Claim.

10. **VENDOR’S RECALL OBLIGATIONS.** In the event all or any portion of the Goods are under investigation for potential recall, recalled voluntarily, or recalled by order or at the direction of any government entity, Vendor shall immediately notify Zulily’s compliance team at [compliance@zulily.com](mailto:compliance@zulily.com) and cooperate fully with Zulily and the government entity, if applicable, to expeditiously complete such recall. Vendor is solely liable for any and all obligations, liabilities, damages, costs, expenses, and notifications related to or arising from any such recall of the Goods. Vendor shall immediately reimburse Zulily for all such obligations, liabilities, damages, costs, or other expenses incurred by Zulily related to any recall of the Goods, as well as all additional costs incurred by Zulily to refund customer purchases and recall the Goods, including costs of destruction, transportation, demurrage, inspection, handling, repacking, commissions, insurance, and taxes, as well as all actual damages to Zulily.

11. **INSURANCE.** Vendor shall obtain and maintain, at its expense, policies of commercial general liability insurance, including products liability and completed operations liability insurance covering liabilities relating to the Goods. The insurance shall include a broad form Vendor’s endorsement naming Zulily as an additional insured party, in those amounts and containing such other provisions satisfactory to Zulily; but in no event shall such insurance be in amounts less than:

- a) **For non-children apparel, wearable accessories and other goods not included in 11(b), below:** (i) Commercial General Liability insurance, including contractual liability, on an occurrence form, with limits no less than \$US 1,000,000 each occurrence, \$US 2,000,000 in the General Aggregate, and \$US 2,000,000 Products-Completed Operations Liability Aggregate; and (ii) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 3,000,000.
- b) **For children apparel, baby gear, toys, electronics, cosmetics, consumables or products with small parts that could pose a choking hazard:** (i) Commercial General Liability insurance, including contractual liability, on an occurrence form, with limits no less than \$US 1,000,000 each occurrence, \$US 2,000,000 in the General Aggregate, and \$US 2,000,000 Products-Completed Operations Liability Aggregate; and (ii) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 5,000,000.

Such coverage shall be primary over any and all other insurance maintained by Zulily and shall include severability or separation of insured's provision. Such coverage shall have a "world-wide" territory provision including lawsuits brought in the United States, and shall be placed with insurers with a current A.M. Best rating of A VIII or better who are licensed to operate within Washington State. Such coverage shall not be terminated during the term of this Agreement or thereafter without at least 30 days prior written notice to Zulily. Certificates of insurance evidencing such coverage and including a copy of the additional insured endorsement shall be submitted in advance of or concurrent with the acceptance of a Purchase Order, upon each policy renewal, and upon request by Zulily.

**12. REMEDIES.** At Zulily's sole discretion and without prejudice to any other right or remedy, in the event of Vendor's failure to perform, anticipatory breach, or breach of representation, warranty, or any other obligation under this Agreement, Zulily may:

- a) Reject in whole or part, demand replacement of, dispose of, or return for full reimbursement, refund and/or credit, any Goods;
- b) Charge to Vendor all costs and expenses incurred by Zulily for Goods returned or disposed of by Zulily because of any defect in, or non-conformity of the Goods;
- c) Cancel or suspend Zulily's performance (in whole or in part) under the applicable Purchase Order or any other Purchase Order; and
- d) Charge, deduct, or withhold payment from, or offset against any monetary obligations to Vendor under any Purchase Order, all refunds, credits, return costs, chargebacks, expenses, costs (including legal fees), penalties, damages (including Zulily's lost profits on completed sales that are cancelled due to Vendor's failure to perform or breach) and other monetary obligations owed by Vendor to Zulily or its Affiliates. Any installment payment or advance made by Zulily to Vendor in respect to any Purchase Order or this Agreement or any other agreement while any of Vendor's monetary obligations are outstanding shall be deemed to be an overpayment and shall be subject to recoupment and/or set off by Zulily. Without limiting the foregoing, Zulily shall have the right, at all times, to deduct any Vendor's monetary obligations from any amounts owed to Vendor by Zulily, and to pay only the net sum due, if any. Zulily may further exercise this right to offset when any third-party asserts a lien or security interest over Vendor's assets in Zulily's possession pursuant to Article 9-406 of the Uniform Commercial Code.

**13. LIMITATION OF LIABILITY.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN ANY PURCHASE ORDER, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE SERVICES HEREUNDER FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. ZULILY SHALL NOT BE LIABLE FOR THE CONTENTS OF ANY OFFER OR THE SUCCESS OF ANY OFFER. NEITHER PARTY WARRANTS AGAINST AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE SERVICES, TELECOMMUNICATIONS SYSTEMS OR THE INTERNET, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER SIMILAR INJURY, DAMAGE OR DISRUPTION OF ANY KIND. EXCEPT FOR VENDOR'S OBLIGATIONS UNDER SECTIONS 9(c), 10, 11 AND 14 HEREOF, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP, OR THE BUSINESS BETWEEN THEM, INCLUDING LOSS OF PROFITS, LOSS, OF REVENUE, OR LOSS OF BUSINESS OPPORTUNITIES, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. ZULILY'S MAXIMUM AGGREGATE LIABILITY TO VENDOR FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY ZULILY TO VENDOR UNDER ALL OPERATIVE PURCHASE ORDERS DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE.

**14. CONFIDENTIALITY.** Each party undertakes to retain in confidence the terms of this Agreement. Confidential Information (defined below) is and shall remain the sole property of the disclosing party ("**Disclosing Party**"). The receiving party ("**Receiving Party**") recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party. The Receiving Party undertakes to retain in confidence all information, personal data, technology, materials, and know-how of the Disclosing Party disclosed to or acquired by the Receiving Party pursuant to or in connection with this Agreement that is either designated as proprietary or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary or confidential, including all customer data and non-public information available to the parties through the Vendor Portal (the "**Confidential Information**"); provided that each party may disclose Confidential Information and the terms and conditions of this Agreement to its immediate legal and financial consultants or Affiliates in the ordinary course of its business provided that the person or entity to whom such information is disclosed is bound by confidentiality provisions at least as protective as the terms of this Agreement. Confidential Information of the Disclosing Party will not be used by the Receiving Party for any purpose other than to carry out the activities contemplated by this Agreement. Each party agrees to use commercially reasonable efforts to protect Confidential Information of the Disclosing Party. The Receiving Party will notify the Disclosing Party promptly in

writing in the event that the Receiving Party learns of any unauthorized use or disclosure of any Confidential Information that it has received from the Disclosing Party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. The restrictions set forth in this Section 14 will not apply to any information that: (a) was known by the Receiving Party without obligation of confidentiality prior to disclosure thereof by the Disclosing Party; (b) was in or entered the public domain legally and through no fault of the Receiving Party; (c) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality; (d) is required to be disclosed by applicable laws, regulations, or court orders (but in such event, only to the extent required to be disclosed, and provided that the Disclosing Party is given a reasonable opportunity to review and redact the information prior to disclosure or to otherwise seek a court order limiting or preventing disclosure); or (e) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party. Upon request of the Disclosing Party, the Receiving Party will promptly delete, destroy or return to the Disclosing Party all materials, in any medium, that contain or reveal all or any part of any Confidential Information of the Disclosing Party. The Receiving Party acknowledges that breach of this Section 14 by it would result in irreparable harm to the Disclosing Party, for which money damages would be an insufficient remedy, and therefore that the Disclosing Party will be entitled to seek injunctive relief to enforce the provisions of this Section 14, without any obligation to post a bond or other security.

## **15. MISCELLANEOUS.**

- a) **Choice of Law.** This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods or any laws implementing such Convention in any jurisdiction where the Goods are sold, the application of which are expressly disclaimed. This Agreement, and all matters arising from or relating to the parties' relationship or performance under this Agreement, shall be governed by and interpreted according to applicable U.S. federal law and the laws of the State of Washington, without reference to any applicable choice of law rules.
- b) **Dispute Resolution and Class Action Waiver.**
  - (i) **Any controversy, claim, or dispute arising out of or relating to this Agreement or the parties' relationship shall be resolved exclusively through binding arbitration on an individual basis administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.** Service of the demand for arbitration shall be made upon each party in accordance with Section 15(d) below. Any such arbitration demand shall be filed with the AAA's office in Seattle, Washington, and the place of arbitration shall be Seattle, Washington, unless the parties mutually agree on another location. The arbitration shall be governed by the Federal Arbitration Act, applicable U.S. federal law, and the laws of the State of Washington. Consistent with the limitation-of-liability provision agreed to by the parties above, the arbitrator will have no authority to award punitive, exemplary, consequential, or other damages that are inconsistent with that provision except as may be required by statute. The arbitrator shall have the authority to award injunctive or declaratory relief as between the parties to the same extent a court would, and the arbitrator must follow the law and the terms of this Agreement as a court would. Payment of all filing, administration, and arbitrator fees will be governed by the AAA's rules. Neither Vendor nor Zulily will be liable to the other for any costs, expenses, or attorneys' fees incurred in connection with the proceeding unless the arbitrator determines that the party against whom such costs or fees are sought has instituted or opposed the proceedings frivolously or in bad faith. Except as may be required by law, Vendor, Zulily, the arbitrator, their officers, agents, employees, attorneys, and all other persons acting in concert or participation with them, shall not disclose the existence, content, or results of any arbitration conducted pursuant to this Agreement without the prior written consent of both Vendor and Zulily. Any failure or refusal of a party to pay its required share of the deposits for arbitrator compensation or administrative fees shall constitute a waiver by that party of the right to present evidence or cross-examine witnesses, and in such event, the other party shall be required only to present sufficient evidence and legal argument as the arbitrator may require for the making of an award.
  - (ii) Notwithstanding the foregoing, either party may bring suit—and both parties hereby irrevocably consent to jurisdiction—exclusively in the state or federal courts located in Seattle, Washington, but only for the limited purposes of a) enjoining infringement or other misuse of intellectual property rights, b) enforcing the provisions of Section 14, c) obtaining temporary, emergency, or preliminary injunctive relief in aid of arbitration, or d) resolving claims that cannot by controlling law be required to be arbitrated. The parties expressly disclaim and release any other rights they may otherwise possess to institute or pursue litigation in any way relating to their relationship or any dispute arising out of or relating thereto in any other forum outside of Seattle, Washington.
  - (iii) Irrespective of the forum or venue for any dispute resolution proceedings between the parties, all such proceedings will be conducted only on an individual basis and not in any form of a class,

consolidated, private attorney general, or representative proceeding. EACH PARTY HEREBY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (A) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (B) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

- c) **Affiliates.** An "Affiliate" of a party means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise.
- d) **Notices.** Except as otherwise provided for herein, all notices or reports permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class mail, postage prepaid, (registered or certified) to the party to receive the notice at the address set forth on the Purchase Order or such other address supplied by the receiving party in the Vendor Portal. All such notices shall be effective upon the earlier of three days after dispatch or upon actual receipt. Any physical notice delivered to Zulily must include a cc: to Zulily's Legal Department, and a copy must also be sent via email to [legal-notices@zulily.com](mailto:legal-notices@zulily.com).
- e) **Assignment.** Vendor may not assign, transfer, or subcontract this Agreement or any portion of its obligations or rights hereunder without Zulily's prior express written consent. Any attempted assignment in contravention of this provision will be null and void. This Agreement will be binding on all permitted assignees and successors in interest.
- f) **Legal Process.** Vendor shall be responsible for all costs of any kind (including legal fees) incurred by Zulily in responding to any discovery, subpoena, or other legal process served upon Zulily, its subsidiaries and/or its Affiliates in connection with litigation or claims between a third party and Vendor (or any person or entity affiliated with Vendor), which costs shall be charged to Vendor or deducted from amounts due to Vendor, at Zulily's sole discretion.
- g) **Force Majeure.** If performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision will be suspended to the extent necessary by such event. "Force Majeure" includes acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, and acts of terrorism or wars. The excused party will use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and will proceed to perform with reasonable speed whenever such causes are removed or ceased. An act or omission will be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its Affiliates or their respective representatives. The party affected by the other party's delay may elect to (a) suspend performance and extend the time for performance for the duration of the Force Majeure event, or (b) cancel all or any part of the unperformed part of this Agreement.
- h) **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in a signed writing to be effective. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.
- i) **Independent Contractors.** The relationship between the parties hereunder is that of independent contractors and nothing herein will be deemed to create a joint venture, partnership, or agency relationship between the parties for any purpose.
- j) **Severability.** If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions of this Agreement will remain in full force and effect in such jurisdiction and will be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.
- k) **Construction.** For purposes of this Agreement, the terms "include," "includes," and "including" will be deemed to be followed by the words "without limitation."

- l) **Interpretation.** Any uncertainty or ambiguity in this Agreement shall not be construed against Zulily as the author or drafter of this Agreement. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of this Agreement, including any document drafted or delivered in connection with the transactions contemplated by this Agreement.
- m) **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties regarding the subject matter contained herein. To that end, this Agreement merges and cancels any and all actual or alleged representations, warranties, promises, or other statements allegedly made with respect to the subject matter of the Agreement, and the parties expressly acknowledge and agree that the terms herein supersede all previous understandings and agreements between the parties, oral or written. Moreover, for the sake of complete clarity, Vendor expressly acknowledges and agrees that: (i) it has not received any promises or representations other than those expressly stated in writing in this Agreement; and (ii) it has not relied upon any such alleged promises or representations when determining whether to enter into this Agreement. In the event of any conflict between these terms and a Purchase Order, these terms shall govern.
- n) **Modifications.** Zulily may modify this Agreement (including the Vendor Policies) from time to time in its sole discretion. Unless otherwise provided herein, or unless a different effective date is otherwise provided with any such modification, all modifications will take effect fifteen (15) days after the modified Agreement (or policy) has been posted to the Vendor Portal. Zulily will also make reasonable efforts to provide at least fifteen (15) days' advance notice of the effectiveness of any modifications by sending an email notification to the email addresses associated with Vendor's account, by providing written notification on the Zulily vendor blog, or by similar means. Notwithstanding the foregoing, however, Zulily reserves the right to modify the Agreement at any time with immediate effect for legal, regulatory, security, fraud and abuse prevention, or safety reasons, or to restrict activities Zulily deems unsafe, inappropriate, or offensive. Vendor's use of the Vendor Portal, acceptance of a Purchase Order from Zulily, or shipment of Goods pursuant to a Purchase Order after the effective date of any modification to the Agreement constitutes Vendor's acceptance of that modified Agreement. IF ANY MODIFICATION IS UNACCEPTABLE TO VENDOR, VENDOR'S ONLY RECOURSE AND REMEDY IS TO TERMINATE THE AGREEMENT AS PROVIDED HEREIN. Except as set forth above, this Agreement, and any Purchase Order issued pursuant to this Agreement, may not be amended or modified except by a writing signed by both parties.

Each party to this Agreement (a) has reviewed the Agreement; (b) fully understands the rights and obligations created by this Agreement; (c) attests and agrees that it has had a reasonable opportunity to review this Agreement and to have counsel of their choosing review this Agreement (at its own expense); and (d) voluntarily enters into this Agreement, accepting and agreeing to all of its terms and conditions.