

VENDOR TERMS AND CONDITIONS

THESE VENDOR TERMS AND CONDITIONS, together with any Purchase Orders issued to Vendor by zulily, inc. ("zulily"), located at 2601 Elliott Avenue, Suite 200, Seattle, WA 98121, and such other written specifications as zulily may from time to time determine in its sole discretion (together, the "Agreement") shall govern and control zulily's purchase from Vendor of any goods or services described in a Purchase Order ("Goods"). VENDOR'S SHIPMENT OF GOODS PURSUANT TO A PURCHASE ORDER OR ITS EARLIER USE OF ZULILY'S VENDOR PORTAL SHALL CONSTITUTE ITS ACCEPTANCE AND AGREEMENT TO THESE TERMS. The parties agree as follows:

1. **ZULILY OBLIGATIONS.** zulily may purchase Goods from Vendor and provide related services necessary to offer the Goods for sale to consumers ("Offer") on zulily's website ("Site") for a specified period of time ("Service Period"). All aspects of the Offer and Service Period 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"). Nothing herein shall obligate zulily to any minimum purchase or future purchase of Goods from Vendor.
2. **VENDOR OBLIGATIONS.**
 - a) **Shipment of Goods.** Timely delivery of the Goods is of the essence. Upon receipt of a Purchase Order, Vendor agrees to ship all Goods within two (2) business days of zulily's issuance of the Purchase Order.
 - b) **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 all requirements specified in zulily's Shipping & Routing Guide ("Routing Guide") available on zulily's Vendor Portal website at <https://portal.zulily.com/> ("Vendor Portal"), and all applicable laws, regulations, carrier tariffs and classification related to packing and shipping, as well as any additional rules and procedures established by the commercial carrier chosen by zulily for the shipment.
 - c) **Samples.** Vendor agrees to provide samples of Goods ("Samples") prior to the Service Period in the amount and style requested by zulily for its Offer on the Site. 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.
 - d) **Excess or Substitute Items.** Vendor agrees to fulfill only those quantities on the Purchase Order. Unless agreed to in writing by Vendor and zulily, no additional or substitute items will be shipped.
 - e) **Inspections.** Vendor agrees that at any time, zulily will have the right to have its representatives visit Vendor's premises for quality assurance purpose 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 operations. Vendor will cooperate in any such inspection, audit or investigation.
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. 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 agrees to 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.** Vendor agrees to invoice zulily only for goods shipped as authorized in the Purchase Order and will submit invoices via the Vendor Portal. Invoices shall include: Unique invoice number and date, ship date, remittance address, purchase order number, payment due date, item description, price and quantity shipped. Vendor further agrees to provide zulily with any requested tax information, including Forms W-9 or W-8BEN. zulily agrees to pay Vendor within thirty (30) days of its receipt of invoice or receipt of goods, whichever is later. Vendor shall invoice zulily for only those Goods shipped as authorized in the Purchase Order, upon receipt of a Purchase Order. Notwithstanding any other provisions of this Agreement, zulily may delay or withhold payment of any amounts due or to become due to Vendor from zulily, in whole or in part, by reason of Vendor's failure to perform in accordance with this Agreement, or for any other reasonable cause (e.g., to offset any damages, costs or expenses incurred by zulily on account of any default by Vendor of its representations, warranties or obligations under this Agreement).
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 the Vendor as provided in the Routing Guide, in addition to any other remedy identified in this Agreement.
7. **TERM AND TERMINATION.**
 - a) **Term.** This Agreement shall commence on the earlier of the date of a Purchase Order or Vendor's first use of the Vendor Portal, and shall remain in effect until all parties' obligations are performed or until terminated by either party as set forth in this Agreement ("Term").
 - b) **Termination.** Either party may terminate this Agreement upon thirty (30) days' written notice to the other party. Either party may terminate this Agreement 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 immediately upon written notice to Vendor if Vendor: (i) makes an assignment in violation of Section 15(c); (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 insolvent or makes an assignment for the benefit of creditors, or fails generally to pay its debts as they become due or otherwise is likely to become insolvent; or (iv) voluntarily or involuntarily becomes the subject of any proceeding relating to bankruptcy, insolvency, receivership, liquidation, or other similar proceeding. 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, (a) zulily's rights under Section 8 will survive with respect to Goods that zulily may feature on the Site; (b) the rights and obligations of the Parties under Sections, 5, 6, 7(c), 9, 10, 12, 13, 14 and 15 will survive; and (c) Vendor will, within five (5) days, return, and retain no copies of, all zulily Confidential Information in its possession at the time of expiration or termination.
8. **LICENSE.** Vendor owns or is properly licensed to promote, market and sell the Goods to be purchased by zulily and advertised for sale on the Site, and hereby grants to zulily a limited, worldwide, non-exclusive, royalty-free right and license to display, reproduce, distribute, transmit, broadcast and create derivative works of all trademarks, service marks, logos, copyrighted materials and proprietary ad copy relating to the Goods and the marketing, advertising, and promotion of its Offer or the Goods including any blog posts, social media, email communications, and media related to the Offer or the Goods. Except for the limited license granted herein, Vendor

retains all proprietary rights in and to all of its intellectual property and zulily's use of such property pursuant to the license herein granted shall inure to the benefit of Vendor. zulily retains all proprietary rights in and to all of zulily's intellectual property, including all business information of any kind that is generated by or accessible through the Site and the Vendor Portal, all rights relating to 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), all original copy and photographic images created by zulily for the purpose of featuring Vendor's Goods on the Site, and the name "zulily," with all derivatives thereof, and all other trademarks and logos owned or controlled by zulily. 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 represents and warrants that:
- i) all Goods delivered (a) conform to the specifications provided by zulily; (b) are identical in appearance and equal in quality to Samples and/or product images submitted to zulily; (c) are free from defects in design, material, construction and workmanship; (d) are fit for the particular purpose for which such Goods ordinarily are used; (e) present no risk of damage to property or injury, harm or illness to any person when used for their intended purpose, and (f) do not infringe upon the intellectual property rights of any third party;
 - ii) it 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, and the rights granted to zulily in Section 8 are sufficient to permit zulily's promotion and resale of the Goods without infringing upon the intellectual property or other rights of any third party, and Vendor will promptly address, defend and attempt to resolve in good faith any allegations of infringement asserted against zulily relating to the Offer or its sale of the Goods;
 - iii) all Goods comply with applicable federal, state, provincial, or 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, (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 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, the Lanham Act, Hazardous Substances Labeling Act, Flammable Fabrics Act, Food, Drug & Cosmetics Act, Consumer Product Safety Act, the Consumer Product Safety Improvement Act, Federal Trade Commission Act, FTC Guidelines, Trade Practice Rules and Regulations, and the United States Consumer Products Safety Commission; 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) all Goods sold in Canada comply with applicable federal, provincial, or 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, (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, Federal the 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 shall maintain all relevant testing documents in accord with all applicable laws and regulations;
- v) all Goods are accurately described in Vendor-approved Site copy, and fully comply with the claims and labeling set forth thereon and relating thereto, and statements, claims and warranties made by the Vendor with respect to such Goods;
- vi) it has received, read and will comply with the requirements set forth in the Routing Guide, 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;
- vii) all Goods comply with any law, rule or regulation of either the country of manufacture or the United States governing 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, that no prison labor or human trafficking is utilized in the production of any Goods;
- viii) it shall establish its manufacturer's suggested retail price ("MSRP") for the Goods and provide the same to zulily to enable zulily to establish an accurate point of reference for the discounted pricing zulily offers to customers on its Site;
- ix) the price charged to zulily is no less favorable to zulily than the most favorable pricing under which Vendor has or will sell the same Goods to any third party during or within two weeks of the Offer. If Vendor sells, or offers to sell any Goods at prices more favorable than the prices provided hereunder, Vendor shall notify zulily and extend the more favorable pricing to zulily and promptly credit zulily any amounts it is owed as a result of the new of the more favorable pricing.;
- x) except as it has specifically informed zulily in writing, the Goods 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;

- xi) except as it has specifically informed zulily in writing, all Goods may be shipped using standard commercial carriers without any special permissions or approvals or special handling instructions;
 - xii) the retail consumer has the right to rely on these warranties and enforce the same as against the Vendor, and;
 - xiii) if the Goods include items related to child or infant safety, including but not limited to 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 shall defend, indemnify and hold the other party and its officers, directors, employees, agents, sublicensees, and subcontractors harmless from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses, including reasonable attorneys' fees arising out of or related to any third party allegation, complaint, claim, suit or proceeding (together "Claim") resulting from (a) breach of the indemnifying party's obligations, representations and warranties set forth herein and (b) the negligence or willful misconduct of the indemnifying party or any of its employees, personnel or agents; provided that (i) notice is promptly provided in writing of the Claim; and (ii) the indemnifying party has sole control of the defense and all related settlement negotiations, if it has accepted the obligation to indemnify without reservation, provided that no settlement requiring 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 or fails to timely act, the indemnified party shall be permitted to retain independent counsel which shall be paid for by the indemnifying party.

10. VENDOR'S RECALL OBLIGATIONS. In the event all or any portion of the Goods are recalled voluntarily or by order or at the direction of any government entity, Vendor shall cooperate fully with zulily and the government entity to expeditiously complete such recall. Vendor shall be liable for a full refund or credit for the Goods, as well as all additional costs incurred by zulily to refund customer purchases and recall the Goods, including costs of transportation, demurrage, inspection, handling, repacking, commissions, insurance and taxes, as well as all actual and consequential damages to zulily, including any damage to zulily's reputation or brand.

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, with 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 apparel, wearable accessories and other goods not included in 11(b), below.** (A) 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 (B) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 3,000,000.
- b) **For toys, electronics, cosmetics, consumables or products with small parts that could pose a choking hazard:** (A) 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 (B) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 5,000,000.

- c) 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. 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 PO, 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 or warranty, zulily may:

- a) Reject in whole or part, and demand replacement of, or return for full reimbursement, refund and/or credit, any Goods, including non-conforming Goods.
- b) Charge to Vendor all direct and indirect costs and expenses for Goods returned by zulily's retail consumers 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 PO, or any other PO.
- d) Deduct from or set off against any monetary obligations to Vendor under any PO all refunds, credits, return costs, chargebacks, penalties and other monetary obligations owed by Vendor to zulily. Any installment payment or advance made by zulily to Vendor in respect to any PO or this 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.

13. LIMITATION OF LIABILITY.

EXCEPT AS EXPRESSLY PROVIDED 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 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 OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS, OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. ZULILY'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY ZULILY TO VENDOR UNDER ANY OPERATIVE PURCHASE ORDER DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE.

14. CONFIDENTIALITY.

Each party (the "Receiving Party") undertakes to retain in confidence the terms of this Agreement and all other non-public information, technology, materials and know-how of the

other 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 ("Confidential Information"); provided that each party may disclose the terms and conditions of this Agreement to its immediate legal and financial consultants in the ordinary course of its business. Neither party will use any Confidential Information with respect to which it is 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, and in any event, to take precautions at least as great as those taken to protect its own confidential information of a similar nature. The Receiving Party will also 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 or regulations (but in such event, only to the extent required to be disclosed, and provided that the Disclosing Party is given the opportunity to review and redact the Agreement prior to 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 return to the other all materials, in any medium, that contain or reveal all or any part of any Confidential Information of the Disclosing Party. Each party acknowledges that breach of this provision 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) **Governing Law/Attorneys' Fees.** This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed. This Agreement shall be governed by the laws of the State of Washington without regard to its choice of law provisions. The parties irrevocably and unconditionally consent and submit to exclusive venue and jurisdiction in the state and federal courts sitting in King County, Washington. The prevailing party in any dispute between the parties arising from this Agreement or other matter shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such dispute.
- b) **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered in person, mailed by first class mail, postage prepaid, (registered or certified), or sent by e-mail or facsimile 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.
- c) **Assignment.** Vendor may not assign, transfer, or subcontract this Agreement or any portion of its duties hereunder without zulily's express, prior 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.

- d) **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.
- e) **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.
- f) **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.
- g) **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.
- h) **Construction.** For purposes of this Agreement, the terms "include," "includes," and "including" will be deemed to be followed by the words "without limitation."
- i) **Entire Agreement.** A Purchase Order may not be amended, except by a writing signed by both parties. The terms of this Agreement may be revised by zulily from time to time in its sole discretion. Any updates or revisions by zulily will be made available to Vendor by posting the Agreement, as revised, on the Vendor Portal. Unless otherwise provided in the revised Agreement, the revised Agreement, shall take effect immediately when posted in the Vendor Portal. IF ANY MODIFICATION IS UNACCEPTABLE TO VENDOR, VENDOR'S ONLY RECOURSE AND REMEDY IS TO TERMINATE THE AGREEMENT AS PROVIDED HEREIN. VENDOR'S CONTINUED USE OF THE VENDOR PORTAL AND ANY SALE OF GOODS FOLLOWING THE MODIFICATION OF THE TERMS WILL CONSTITUTE VENDOR'S BINDING ACCEPTANCE OF AND AGREEMENT TO THE TERMS, AS AMENDED. IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND A PURCHASE ORDER, THESE TERMS SHALL GOVERN.