

Purchase Agreement

This Purchase Agreement (this “**Agreement**”) is entered into by and between Groupon Goods, Inc., a Delaware corporation with its principal office at 600 West Chicago Ave., Chicago, IL 60654 (“**Groupon**”), and Seller. Seller and Groupon may each be referred to individually as a “**Party**” and together as the “**Parties**”.

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

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the following meanings:

1.1. “**Affiliate**” means any Person that, directly or indirectly, controls, is controlled by, or is under common control with, a specified Person.

1.2. “**Confidential Information**” means (i) the terms of this Agreement, (ii) any materials, documents or information designated by either Party as “confidential” or with a similar designation, and (iii) any materials, documents or information that either Party should reasonably expect to be confidential or proprietary under the circumstances and/or given the nature of the materials, documents or information, in any form or medium whether disclosed orally or in writing before or after the Effective Date of this Agreement.

1.3. “**Goods**” means the articles, products or things specified in a Purchase Order (including their packaging materials, containers and accompanying pallets).

1.4. “**Out of Compliance**” means Goods or Services received by Groupon from Seller pursuant to a Purchase Order that (i) are found to be out of compliance with the Purchase Order or this Agreement, including but not limited to the Specifications, if any, Seller’s representations and warranties, and/or Groupon’s written instructions; (ii) are found or alleged by a credible source to be in violation of Applicable Law (as defined below); (iii) subject to any recall; and/or (iv) are found or alleged by a credible source to infringe, dilute, misappropriate or otherwise violate any intellectual property law or right of privacy or publicity.

1.5. “**Person**” means an individual or a partnership, corporation, limited liability company, trust, joint venture, association, unincorporated organization, government agency or political subdivision thereof, or other entity.

1.6. “**Purchase Order**” means the document provided by Groupon to Seller indicating the types, quantities, pricing and other agreed upon terms related to the Goods.

1.7. “**Website**” means www.groupon.com, other distribution channels owned, controlled or operated by Groupon (including, without limitation, emails, mobile applications or other types of electronic offerings) and/or other platforms or distribution channels owned, controlled or operated by Groupon’s affiliates or third party business partners.

1.8. “**Seller**” means the seller, vendor, or supplier identified in a Purchase Order.

1.9. “**Services**” means the activities in which Seller has engaged on Groupon’s behalf prior to executing this Agreement (in contemplation of the existence of this Agreement), or will engage in under this Agreement, including, but not limited to activities related to packaging, delivery, and fulfillment of Goods.

1.10. “**Specifications**” means any specification or stipulation contained in or annexed to a Purchase Order (or supplied by or on behalf of the Groupon separately in a writing referred to in a Purchase Order).

1.11. “**Subcontractor**” means each any third party assisting Groupon or Seller with its obligations hereunder.

2. Ordering.

2.1. All Goods and Services are purchased subject to the terms and conditions established in this Agreement and Seller, by supplying Goods, accepts these terms and conditions. No Goods or Services shall be supplied or performed by the Seller, its employees, agents, representatives or Subcontractors except in accordance with the terms of this Agreement. Groupon expressly rejects any additional or inconsistent terms and conditions offered by Seller at any time and not agreed to in writing and signed by Groupon, notwithstanding any payment by Groupon. This Agreement does not by itself constitute an order for any specific Goods.

2.2. All Purchase Orders shall be in substantially the form set forth as Exhibit A and shall be governed by and become part of this Agreement upon execution by both Parties. To the extent that an express term of a Purchase Order is inconsistent with a term of this Agreement, the terms of this Agreement shall prevail over and supersede such inconsistent term of the Purchase Order.

2.3. Groupon shall have the right to modify, change or suspend a Purchase Order or any written instructions, including, but not limited to, the scope of Services, the quantity of Goods subject to a Purchase Order or the delivery dates, upon written notice to Seller. The Parties acknowledge and agree that certain matters such as material and product releases, changes in delivery dates, delivery or shipment instructions, variances in orders and other similar matters may be sent by Groupon to Seller via email or facsimile. The Parties further acknowledge and agree that such communications, and any provision of Goods or Services thereunder, shall be incorporated by reference into the applicable Purchase Order and shall be subject to this Agreement.

2.4. During the performance of this Agreement or any Purchase Order hereunder, Seller shall not make any changes in the design, material, process, procedures or practices affecting Goods or Services to be furnished by Seller without the prior written consent of Groupon.

3. Term and Termination.

3.1. This Agreement shall commence on the date the first Purchase Order between Buyer and Seller is executed and will continue in effect for a period of twelve (12) months (the “**Term**”), unless earlier terminated in accordance with Section 3.2.

3.2. Groupon may terminate this Agreement or any Purchase Order in whole or in part at any time for any reason upon written notice to Seller. Seller may terminate this Agreement at any time upon thirty (30) days prior written notice to Groupon. For the avoidance of doubt, termination of all or any part of a Purchase Order does not automatically terminate this Agreement.

3.3. Upon the termination of this Agreement or all or any part of a Purchase Order by Groupon for any reason, with or without cause, Seller shall, and shall cause any Subcontractor to, immediately: (i) cease furnishing any Goods and performing any Services hereunder; and (ii) preserve and protect (A) any Goods on hand, purchased for or committed to based on a Purchase Order or (B) Services in progress and materials on hand purchased for or committed to based on a Purchase Order, pending Groupon’s instructions. Groupon may, in its sole discretion, take possession of all Goods and Services in progress. Seller shall not be paid for any Goods procured or Services performed after a notice of termination is delivered. Seller shall be obligated to mitigate all damages, including, without limitation, by not incurring costs that could reasonably be avoided and by consuming or selling to others, in its ordinary course of business, Goods or materials used to manufacture Goods or perform the Services.

3.4. In the case of termination by Groupon of this Agreement or all or any part of a Purchase Order without cause, Groupon shall pay an amount to Seller due for Seller’s obligations to any third parties that Seller can prove by written documentation were entered into: (i) prior to the date of such termination, (ii) in reliance on a Purchase Order, and (iii) that Seller cannot cancel or otherwise make use of the ordered Goods or Services; provided that such amount will not exceed, in any case, the remaining payment(s) that would have been made under a Purchase Order, and subject further to the requirements and limitations set forth in this Section 3 and the other provisions of this Agreement. The foregoing is Seller’s sole and exclusive remedy in the event Groupon terminates all or any part of a Purchase Order without cause.

3.5. In the case of termination of this Agreement by Seller, Seller shall furnish all Goods and perform all Services related to Purchase Orders accepted prior to the delivery of the notice of termination, and Groupon shall pay Seller for such Goods and Services in accordance with the terms of this Agreement and the applicable Purchase Order.

3.6. If: (i) Seller fails to furnish the Goods or perform the Services on or before the shipment or delivery date specified by Groupon or otherwise fails to comply with the terms of this Agreement; (ii) Seller breaches any term, provision, warranty, representation, obligation, covenant or condition of this Agreement; (iii) Seller fails to make progress as to endanger performance of its obligations under this Agreement in accordance with their terms; (iv) Seller ceases to conduct its operations in the normal course of business (including inability to meet its obligations as they mature); (v) any proceeding under the bankruptcy or insolvency laws is brought by or against Seller; (vi) a receiver for Seller is appointed or is applied for; or (vii) an assignment for the benefit of creditors is made by Seller; then, without limiting any other right or remedy provided by this Agreement, or by law or in equity, Groupon shall have the right to terminate this Agreement or Purchase Order for cause, in whole or in part, by written notice to Seller without liability to Groupon except for Goods or Services previously delivered to and accepted by Groupon or as otherwise provided herein, subject to any rights of Groupon due to breach of warranty or the provision of defective or Out of Compliance Goods or Services.

4. Pricing and Payment.

4.1. Unless otherwise set forth in this Agreement or a Purchase Order, the price set forth in a Purchase Order includes all applicable taxes and fees chargeable to Groupon except sales tax, consumption tax and value-added tax, which shall be shown separately where applicable. Seller will accept and apply appropriate tax exemption documentation where available. Groupon shall not incur any charges for packing, crafting, freight, shipping, handling, local cartage or any other charges unless expressly identified in this Agreement or a Purchase Order.

4.2. For each Purchase Order, Seller shall submit one (1) complete and accurate invoice to Groupon via the Commerce Interface portal. Seller shall mark each invoice with the Purchase Order number, description, item number (UPC), quantity of Goods and pricing, reflecting any applicable discounts or allowances. Unless otherwise agreed in writing by the Parties, subject to the other provisions of this Agreement, payment shall be due to Seller after Groupon’s receipt of the Goods and Services ordered and Seller’s complete and accurate invoice. All payments shall be made within the number of days set forth in the Purchase Order under “Payment Terms” in the currency identified in the Purchase Order. Payment of amounts due under this Agreement pursuant to Seller’s invoice is subject to (i) inspection and acceptance of the Goods and Services by Groupon or its customers and (ii) adjustments for shortages or defective or Out of Compliance Goods or Services. Groupon reserves the right to seek reasonable assurances of Seller’s financial stability at any time during the period beginning on the Effective Date or Purchase Order Effective Date, as applicable, and ending 180 days thereafter, including through bank reference notes and credit reports.

4.3. Seller acknowledges that Groupon may deduct from future payments due to Seller any amounts owed by Seller to Groupon hereunder or under prior or contemporaneous agreements between the Parties (including, without limitation, in connection with Out of Compliance or defective Goods and Services and under Section 7.

4.4. ANY CLAIM ARISING OUT OF OR RELATING TO ANY PAYMENT PAID OR OWED BY GROUPON IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER MUST BE MADE IN WRITING WITHIN 60 DAYS AFTER THE EARLIER OF: (i) INITIAL PAYMENT BY GROUPON IN CONNECTION WITH THE APPLICABLE GOODS AND SERVICES, OR (ii) SELLER’S FIRST KNOWLEDGE OF THE GROUNDS FOR SUCH CLAIM, AND ALL SUCH CLAIMS NOT SO MADE SHALL BE DEEMED WAIVED BY SELLER.

5. Shipping and Delivery.

5.1. Seller shall furnish the Goods and Services identified in any Purchase Order in accordance with the shipping and delivery standards identified in Exhibit B. The date(s) of delivery of the Goods and/or commencement and performance of the Services shall be those specified in the applicable Purchase Order, or as otherwise agreed to in writing by the Parties. Seller will, by the applicable date identified in the Purchase Order, deliver the Goods to Groupon or its Subcontractor by making the Goods available for pick-up at the location(s) identified in the Purchase Order. Seller is responsible for the cost of transport to Groupon's warehouse(s), as identified in the Purchase Order. Seller will either pay for such shipment directly or Groupon will have a discount of 2% on the per unit price of the Goods. Seller is responsible for clearing the Goods for import, if applicable, and paying any applicable duties, taxes and other fees in connection therewith. Seller shall not charge Groupon for packaging or storage.

5.2. All Goods shall be packaged, marked and otherwise prepared in accordance with the requirements in Exhibit B or as specified by Groupon and, at all times, good commercial practices. All packages must be clearly marked with the Seller's name, the Purchase Order number and details of the contents of the package, including, but not limited to, description of the Goods and quantity. Any deliveries or shipments that do not comply with Groupon's written instructions may be returned or held by Groupon, subject to Groupon's instructions, at Seller's risk and expense. Only the exact items and quantities set forth in the applicable Purchase Order will be accepted. Substitutions will not be accepted. If the size, dimensions or weight of the Goods represented by Seller (in the Purchase Order or otherwise) is inaccurate, Seller will remit to Groupon, immediately following notice, the difference between: (i) any shipping and logistics costs actually paid or due by Groupon, and (ii) the expected shipping and logistics costs based on Seller's representations.

5.3. Time is of the essence with respect to the provision of Goods and the performance of Services. Seller shall notify Groupon immediately in writing of any actual or potential delay or threat to delay the timely performance of this Agreement. No acts or omissions of Groupon, including, without limitation, modifications of the Agreement or acceptance of late shipments or deliveries, shall constitute a waiver by Groupon of the foregoing sentence. Any such waiver may be made only in accordance with Section 15.3.

6. Title and Risk of Loss. Following issuance of a Purchase Order by Groupon, title to, and risk of loss of, the Goods shall pass from Seller to Groupon upon Seller's delivery of the Goods to Groupon or its Subcontractor.

7. Audit and Inspection.

7.1. All Goods and Services are subject to inspection and acceptance by Groupon and/or a third party authorized by Groupon before, during and after shipment, delivery or performance to inspect the quality of the Goods and determine conformance to a Purchase Order and the Specifications, if any. In addition to any other rights Groupon may have if the Goods or Services are Out of Compliance, Groupon shall have the right to return the Goods to Seller for correction, replacement, credit or refund, as Groupon may direct and at Seller's expense. Any costs of inspection, storage, shipment, transportation, repacking or reinspection by Groupon or any customer in connection with Out of Compliance Goods shall be at Seller's expense. In addition to Groupon's other rights and remedies, if an inspection discloses that part of the Goods or Services are Out of Compliance, Groupon has the right to cancel any unshipped or unrendered portion of a Purchase Order. Groupon's inspection of the Goods shall in no way constitute an acceptance of the Goods or a waiver of the Product warranties and Specifications, regardless of whether a non-compliance issue was identified.

7.2. If the portion of Goods returned as Out of Compliance or as defective equals or exceeds 50% of the aggregate number of units of Goods with the same UPC purchased in connection with any Purchase Order, Seller will remit to Groupon, immediately following notice, for each returned unit of Goods, the sum of: (i) a full refund of the unit price of the Goods plus any other charges or fees paid by Groupon in connection with each such unit of Goods and the related Services, plus (ii) 15% of the unit price of the Goods as stated in the applicable Purchase Order. Seller acknowledges and agrees that any breach of its obligations hereunder may expose Groupon to losses, and that the potential damages would be difficult to calculate. Accordingly, Seller acknowledges and agrees that the amounts set forth in this Section 7.2 are intended as liquidated damages, and not as a penalty. The provisions of this Section 7.2 are in addition to any other rights or remedies of Groupon pursuant to this Agreement or under Applicable Law.

7.3. Groupon's failure to inspect does not relieve Seller of any responsibility to furnish the Goods and perform the Services in accordance with this Agreement, a Purchase Order or Specifications. Acceptance of all or any part of the Goods or Services provided hereunder shall not be deemed to be a waiver of Groupon's right either to cancel or to return all or any portion of the Goods or Services because the same are Out of Compliance or by reason of defects (latent or patent) or other breach of warranty.

7.4. If the Goods or Services, the promotion, resale, distribution or use thereof by Groupon, or the use thereof by Groupon's subcontractors or customers, is enjoined, is threatened by injunction, or is the subject of any legal proceeding, Seller shall, at its sole cost and expense and as directed by Groupon in its sole discretion: (i) substitute fully equivalent Goods or Services that are not enjoined, threatened by injunction or the subject of any legal proceeding; (ii) modify the Goods or Services so that they no longer infringe, are enjoined, are threatened by injunction or are the subject of any legal proceeding but remain fully equivalent in value and functionality; (iii) obtain for Groupon, its subcontractors or customers the right to continue using the Goods or Services; or (iv) refund all amounts paid for the affected Goods or Services.

8. License. Seller hereby grants to Groupon a non-exclusive, worldwide, royalty free, fully paid-up, perpetual, irrevocable, transferable and sublicensable license and right to use, modify, reproduce, sublicense, publicly display, distribute, broadcast, transmit, stream, publish and publicly perform: (i) Seller's name, logos, trademarks, service marks, domain names, and any audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text and any other content provided, specified, recommended or directed to use by Seller (collectively, "**Seller IP**"); and (ii) any third party's name, logos, trademarks, service marks, domain names, audiovisual recordings, video recordings, audio recordings, photographs, graphics, artwork, text and any other content provided, specified, recommended or directed to use by Seller (collectively, "**Third Party IP**"), in each case in connection with the promotion and resale of the Goods and Services in any and all media or formats now known or hereinafter developed (the "**License**"). Seller

acknowledges that any use of the Seller IP or Third Party IP as contemplated herein is within the sole discretion of Groupon and Groupon may decide not to use the Seller IP or Third Party IP at all.

9. Confidentiality. Seller agrees to keep (and ensure that each of its Subcontractors keeps) Groupon Confidential Information confidential. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorized disclosure of the Groupon Confidential Information to third parties. Seller agrees not to disclose or use the Groupon Confidential Information except for purposes of shipping or delivering the Goods and providing the Services hereunder. If Seller becomes aware of any unauthorized use or disclosure of Groupon Confidential Information, Seller shall promptly and fully notify Groupon of all facts known to it concerning such unauthorized use or disclosure and shall cooperate with Groupon so that Groupon may seek a protective order or other appropriate remedy to protect such Groupon Confidential Information. Upon Groupon's written request or the termination of this Agreement, Seller shall return to Groupon or destroy, at Groupon's option, all Groupon Confidential Information in Seller's or any Subcontractor's possession. ***Without limiting the foregoing, both Parties agree that neither shall issue any press release or other public statement relating to its relationship with the other Party or this Agreement without the express prior written consent of the other Party.***

10. Intellectual Property Rights.

10.1. Seller acknowledges and agrees that, as between the Parties, Groupon owns all right, title and interest in and to the Website, Groupon trade names, logos, trademarks, service marks, domain names, social media handles, all data collected through or from the Website, all audiovisual content, video recordings, audio recordings, photographs, graphics, artwork, text or any other content created by Groupon or at Groupon's direction pursuant to a Work for Hire agreement, or assigned to Groupon, and any materials, software, technology or tools used by Groupon to promote, resell or distribute the Goods and conduct its business in connection therewith (collectively the "**Groupon IP**"). Seller shall not use, sell, rent, lease, sublicense, distribute, broadcast, transmit, stream, place shift, transfer, copy, reproduce, download, time shift, display, perform, modify or timeshare the Groupon IP or any portion thereof, or use such Groupon IP as a component of or a base for products or services prepared for commercial use, sale, sublicense, lease, access or distribution. Seller shall not prepare any derivative work based on the Groupon IP or translate, reverse engineer, decompile or disassemble the Groupon IP. Seller shall not take any action to challenge or object to the validity of Groupon's rights in the Groupon IP or Groupon's ownership or registration thereof.

10.2. Except as specifically provided herein, Seller may not use, nor may it authorize its Subcontractors to use, Groupon IP in any medium without prior written approval from an authorized representative of Groupon.

11. Representations and Warranties.

11.1. In addition to all other express or implied warranties, Seller warrants that: (i) Seller conveys full right, title and interest in and to the Goods, free of any liens or encumbrances, upon delivery of the Goods to Groupon; (ii) Seller is either the manufacturer or an authorized reseller of the Goods, the Goods are covered by the original manufacturer's product warranty and such warranty will be honored by the manufacturer; (iii) the description of the Goods (including, without limitation, any weight or dimensions thereof) set forth in this Agreement is materially complete and accurate in all respects; (iv) the Goods are genuine, authentic, bona fide products manufactured under license from the trademark owner, and Seller has the full right, power and authority to sell the Goods to Groupon and authorize Groupon to promote and resell the Goods; (v) the Goods are free from defects in workmanship, materials and design; (vi) the Goods will be furnished in accordance with and conform to this Agreement, the Purchase Order, the Specifications, if any, and Groupon's written instructions in all respects; (vii) the Goods are merchantable and fit for the purposes, if any, which are stated in the Purchase Order, any Specifications and in conformity with all other requirements of this Agreement; (viii) unless otherwise specifically stated in a Purchase Order, none of the Goods furnished hereunder are (A) government or commercial surplus, (B) used, remanufactured or reconditioned, or of such age or so deteriorated, as to impair the usefulness or safety thereof, or (C) subject to a governmental or consumer safety recall; and (ix) Seller shall notify Groupon should any of the foregoing representations and warranties change following the execution of this Agreement.

11.2. With respect to the Services, in addition to any express or implied warranties, Seller warrants that: (i) Seller possesses the requisite expertise, facilities, equipment and personnel necessary and appropriate to perform the Services; (ii) such Services shall be in conformance with Groupon's specifications (including, without limitation, as set forth in Exhibit B); and (iii) such Services shall be performed in a safe and workmanlike manner.

11.3. Seller warrants that the Services shall be performed, and the Goods shall be manufactured, stored, packaged, labeled, sold, supplied and delivered, in accordance with all applicable international, federal, state and local laws and all executive orders and rules and regulations issued thereunder (collectively, "**Applicable Law**"), including, but not limited to, the Fair Labor Standards Act. Without limiting the foregoing, Seller represents and warrants that it is familiar with and shall comply with: (i) the U.S. Foreign Corrupt Practices Act, which prohibits providing a payment of money or anything of value to a foreign government official, public international organization official, foreign political party, foreign political party official or candidates for such offices, either directly or indirectly, for the purpose of influencing official acts and decisions (including failures to act and decide) in order to assist in obtaining or retaining business or directing business to any entity, and any provisions of local law and Groupon's policies and procedures related thereto; and (ii) all Applicable Law regarding imports and exports, including, without limitation, any Applicable Law of the United States regarding unsanctioned foreign boycotts, anti-boycott laws and embargoed countries.

11.4. Seller further represents and warrants that (i) Seller has not offered or given and will not offer or give to any employee, agent or representative of Groupon or any affiliated entity any gratuity with a view towards securing any business from Groupon or any affiliated entity or influencing such person with respect to the terms, conditions or performance of any contract with Groupon. Any breach of the foregoing sentence shall be a material breach of each and every contract between Groupon and Seller,

including this Agreement; and (ii) Seller has obtained, and will maintain during the term, all applicable regulatory approvals, applications, licenses, requests for exemption, permits or other regulatory authorizations with each applicable regulatory agency and any state or local regulatory body necessary to conduct its business activities to date and to conduct its activities hereunder.

11.5. Seller warrants that if (i) any government authority issues a request, directive or order that the Goods and Services be recalled, (ii) a court of competent jurisdiction orders such a recall, or (iii) Seller reasonably determines that the Goods and Services should be recalled, Seller shall take all necessary or required corrective action pursuant to Applicable Law and immediately notify Groupon of such recall.

11.6. Seller represents and warrants that: (i) Seller owns all right, title and interest in and to the Seller IP and has licensing rights in (with the right to sublicense to Groupon) the Third Party IP, and has the right to grant the License set forth in Section 8; (ii) the Seller IP and the Third Party IP, and Groupon's use thereof, shall not infringe, dilute, misappropriate or otherwise violate, anywhere in the world, any copyright, logo, trademark, service mark, trade name, rights in design or other intellectual property right or right of privacy or publicity of any third party or any Applicable Law; (iii) the sale, use or incorporation into manufactured products of all Goods and Services shall not infringe, dilute, misappropriate or otherwise violate, anywhere in the world, any U.S. or foreign letters patent, copyright, logo, trademark, service mark, trade name, rights in design or other intellectual property right or right of privacy or publicity of any third party, and does not and will not result from the misappropriation of any trade secret or the breach of any confidentiality obligations to any person or entity; (iv) the Goods, any components thereof and any packaging and labeling related to the shall not infringe, dilute, misappropriate or otherwise violate, anywhere in the world, any patent, copyright, logo, trademark, service mark, trade name, trade secret, rights in design or any other intellectual property right or right of privacy or publicity of any third party; and (v) the Goods comply in all respects with all Applicable Law pertaining to their design, manufacture, packaging, labeling and importation, including, without limitation, the certification, labeling and testing requirements of the Consumer Product Safety Improvement Act of 2008.

11.7. The warranties herein cover Groupon, its Affiliates and their respective customers. No warranties shall be deemed disclaimed or excluded unless agreed to in writing by an authorized representative of Groupon. Groupon's approval of designs furnished by Seller shall not relieve Seller of its warranties under this Section 11.

11.8. Each of Groupon and Seller represents and warrants that it has the full power and authority to execute and deliver this Agreement and perform its covenants, duties and obligations described herein.

12. Indemnification. Seller shall indemnify, defend and hold harmless Groupon, its Affiliates and its and their respective directors, officers, managers, members, employees, agents, successors, assigns and customers and users of the Goods from and against any and all claims, suits, actions, costs, expenses, penalties, liabilities, judgments or losses of any kind (including, but not limited to, all reasonable attorneys' fees, costs and expenses) directly or indirectly arising out of or resulting from: (i) a breach by Seller, its affiliated entities or any of their respective directors, officers, employees, agents, contractors or licensees of any representation, warranty or covenant under this Agreement; (ii) the performance or failure to perform of Seller or Seller's agents, employees or Subcontractors under this Agreement; (iii) any act or omission of Seller, its agents, employees or Subcontractors; (iv) the Goods, including, but not limited to, any claims for false or deceptive advertising (to the extent such advertising was developed in reliance on representations or materials provided by Seller or its agents or employees), product defects, personal injury, death or property damages (including, without limitation, due to infestation or contamination); (v) any claim by a third party alleging that the Seller IP, the Third Party IP, Groupon's use thereof, the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe, dilute, misappropriate or otherwise violate, anywhere in the world, any patent, copyright, logo, trademark, service mark, trade name, trade secret, rights in designs, or other intellectual property right or right of privacy or publicity of any third party, whether such are provided alone or in combination with other products, software or processes; and (vi) any claim by a third party alleging infringement, dilution, misappropriation or other violation, anywhere in the world, of any intellectual property right or right of privacy or publicity of any third party, as a result of Groupon advertising or displaying the Goods or Services. In addition to its other rights and remedies, Groupon shall have the right to cancel shipment or delivery of any Goods or Services to be provided hereunder to which any claim described in this Section 12 relates and to return to Seller for full credit or refund any such Goods or Services.

13. Remedies; Limitation of Liability.

13.1. The rights of each party hereunder shall be in addition to its rights and remedies at law or in equity.

13.2. IN NO EVENT SHALL GROUPON BE LIABLE UNDER ANY THEORY TO SELLER OR SELLER'S EMPLOYEES, AGENTS OR SUBCONTRACTORS, OR ANY THIRD PARTY, FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT GROUPON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NOTWITHSTANDING ANYTHING HEREIN OR IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL GROUPON'S LIABILITY HEREUNDER EXCEED THE AGGREGATE PURCHASE PRICE OF THE GOODS AND SERVICES IN THE APPLICABLE PURCHASE ORDER.

14. Insurance. Seller shall carry and maintain insurance coverage satisfactory to Groupon, and at all times sufficient to cover Seller's obligations under this Agreement, and, upon Groupon's request, shall furnish Groupon with evidence of such insurance in a form satisfactory to Groupon. Seller shall name Groupon as an additional insured under the applicable insurance policies as requested by Groupon.

15. Miscellaneous.

15.1. Notices. Any notice required or permitted hereunder shall be provided in writing, and shall be deemed delivered when: (i) delivered by email to a designated email address of the applicable Party, or (ii) actually received or rejected by the designated addressee or, if earlier and regardless of whether or not actually received, when deposited in (A) the United States mail, postage prepaid, certified mail, return receipt requested, or (B) a regional or national overnight courier service, addressed to the applicable Party at the address set forth in the preamble above.

15.2. No Partnership or Joint Venture. The Parties are independent contractors, and nothing contained herein will be construed to create a partnership or joint venture between Groupon and Seller or to make either Groupon or Seller an agent of the other party hereto for any purpose. Neither Party has the authority, without the other Party's prior written approval, to bind or commit the other Party in any way.

15.3. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Groupon, Groupon shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays (including an allowance for business days) due to strikes, riots, acts of God, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Groupon.

15.4. Waiver; Severability. Any waiver of a provision of this Agreement or any Purchase Order must be in writing, expressly identify the provision to be waived and signed by an authorized representative of Groupon. Groupon's failure, whether single or repeated, to exercise a right hereunder shall not be deemed to be a waiver of that right and Groupon's delay in exercising a right shall not be deemed a waiver of that or any future right. If any of the provisions of the Agreement or any Purchase Order are held by a court of competent jurisdiction to be unenforceable or invalid, then such provisions will be ineffective to the extent of the court's ruling. All remaining portions of the Agreement or the Purchase Order shall remain in full force and effect.

15.5. Entire Agreement. This Agreement, together with all Exhibits and each executed Purchase Order hereto, constitutes the entire agreement between the Parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter. This Agreement may be amended or modified only by mutual written agreement of authorized representatives of the Parties.

15.6. Interpretation. Each Party acknowledges that this Agreement is the result of thorough negotiations, multiple drafts and modifications and each Party hereto has consulted with, and been advised by, independent legal counsel in connection with this Agreement. There shall be no presumption of interpretation made against either Party hereto as draftsman of this Agreement. The headings in this Agreement are inserted for convenience of reference only and are not to be considered in the interpretation or construction of the provisions hereof.

15.7. Survival. **Sections 7 through 13 and 14** and any other provision of this Agreement intended or required to survive the termination or expiration of this Agreement in order to achieve its full effect, shall survive any such expiration or termination.

15.8. Multiple Counterparts; Electronic Transmission. This Agreement may be executed in one or more counterparts, each of which may be executed and transmitted by facsimile or other electronic method, and each of which shall be deemed an original, but both of which shall constitute one and the same instrument.

15.9. Assignment. Seller may not transfer or assign any rights or obligations due or to become due under this Agreement (including any Purchase Order) (including, without limitation, in connection with a change-in-control) without the prior written consent of Groupon. Groupon may transfer or assign this Agreement (including any Purchase Order) to a present or future Affiliate or pursuant to a merger, consolidation, reorganization, change-in-control or sale of all or substantially all of the assets or business to which this Agreement (including any Purchase Order) relate, or by operation of law, without notice to Seller.

15.10. Governing Law and Venue; Disputes. The validity, interpretation and construction of this Agreement (including any Purchase Order) and all other related matters shall be governed and interpreted by the laws of the State of Illinois without regard to its conflict or choice of law principles. Any disputes arising out of or relating to this Agreement (including any Purchase Order), or the breach hereof or thereof, the rights granted or obligations undertaken herein or therein, or the Goods or Services hereunder and thereunder, shall proceed in a federal or state court located within Cook County, Illinois. Seller hereby submits to the exclusive jurisdiction of such courts.

EXHIBIT A

(See attached)

EXHIBIT B**Shipping Instructions**

1. Seller will:

- a. Ensure pick-up of Goods are routed via the Groupon Goods Freight Portal (which is the portal for tracking Goods and is accessible via the URL received with a Purchase Order), and then, unless expressly stated otherwise in a Purchase Order, deliver the Goods to the specified location by 5:00 pm CST seven (7) business days after Groupon's issuance of a Purchase Order to Seller (such date and time, the "Ship-By Date");
- b. Provide to Groupon, via electronic means acceptable to Groupon, a receipt or acknowledgement of order confirmation within two (2) days following Groupon's issuance of a Purchase Order to Seller;
- c. Ensure that the Goods purchased under a Purchase Order are "Ready For Pickup" (as described below) by the Ship-By Date;
- d. Ensure that each individual unit of Goods purchased under a Purchase Order contains an accessible UPC barcode capable of being scanned; and
- e. Utilize either the Bill of Lading provided at the time of delivery (and not Seller's own Bill of Lading) and/or the UPS labels provided by the Groupon freight team.

2. Goods, Carton and Pallet Guidelines.

a. "Ready for Pickup" means that:

- i. No unit of Goods needs to be re-labeled or re-packaged for resale and delivery to customers, other than in connection with outbound shipping materials (e.g., a box, bag or envelope);
- ii. Each carton of Goods is clearly labeled with all information necessary to identify the Goods contained within such carton, including the Purchase Order number, applicable UPC(s) (as bar-codes and text), colors and size information, where applicable, and quantity(ies) thereof (and such labeling must be clearly visible and facing outward upon pick-up) (sample attached as Exhibit C); and
- iii. Each carton of Goods contains a label affixed to the upper right side of the carton.
- iv. Please provide full carton quantities. Each carton of Goods with the same UPC must include the same number of units of Goods per carton; provided that, if one carton is a partial, then (A) such carton must be marked "partial" using a bright colored label that is clearly visible and facing outward upon pick-up, and (B) such carton must be on the top layer of the pallet.

b. Additional carton guidelines:

- i. Each carton may contain no more than 5 UPCs; provided that, if the Goods are apparel, each carton may contain no more than 1 UPC;
- ii. Cartons must be able to withstand 250 pounds per square inch pressure. Cartons must have a top to bottom stacking strength of 700 pounds.
- iii. All carton seams must be taped and sealed.
- iv. Carton may be strapped by using plastic-strapping material only and by using two strips across the width of the carton. Metal strapping may not be used; provided that metal strap fasteners may be used in place of heat sealed straps. Any deviation from this standard must be pre-approved by the Groupon Logistics Team and agreed upon in writing by Groupon and Seller.
- v. Staples may not be used to seal cartons, unless appropriate for larger heavy cartons; provided that any such use must be pre-approved in writing by Groupon.
- vi. Each carton must be individually numbered with a carton count to reflect each carton's place out of the total number of cartons (e.g., "1 of 75") to ensure all Goods are accounted for in every stage of the supply chain. For the avoidance of doubt, this requirement applies to all shipments including, but not limited to, small parcel shipments.
- vii. Mark cartons containing glass or breakable items appropriately (e.g., fragile, this end up, etc.).

- viii. Table top and ceramic items must be properly separated with corrugated partitions to prevent such items from hitting each another inside the carton, and to protect from vibration damage. Air cells should also be considered (where applicable) to protect from shock impact.
- c. Additional pallet guidelines
- i. All product must be stacked and shrink-wrapped on standard 48" x 40" pallets.
 - ii. All pallets must be built to a minimum height of 48" and a maximum height of 58".
 - iii. All pallets must be sorted in such a way that pallets contain the smallest number of different styles/colors of Goods.
 - iv. Pallets must be in compliance with International Standards for Phytosanitary Measures No. 15, as revised ("ISPM 15"). An ISPM 15 compliant mark must include the following:
 - A. The IPPC certification symbol;
 - B. The two-letter ISO country code (e.g., US for United States, AU for Australia, GB for United Kingdom), as represented by "XX" in the below example;
 - C. The unique certification number issued to regulating agencies that oversee the individual wood packaging manufacturers ("NPPOs"), to ensure that the wood packaging material can be traced back to the NPPO, as represented by "00" in the below example;
 - D. The unique certification number issued to the treatment provider and/or manufacturer, to ensure that the wood packaging material can be traced back to the treatment provider and/or the manufacturer, as represented by "1111" in the below example;
 - E. The treatment applied to the wood packaging material, as represented by "YY" in the below example: (i) HT is the code for heat treatment to a minimum of 56° C (133° F) for a minimum of 30 minutes; and (ii) MB is the code for methyl bromide fumigation; and
 - F. The "DUN" dunnage code for when the solid wood material is used for dunnage (provided that the "DUN" dunnage code is not applied to manufactured wood packaging, only loose lumber/timbers to help secure products being shipped, so may be excluded).



For example:

3. Pick-Up Guidelines.

- a. All orders picked up by Groupon, its agent or designee must be accompanied by a packing list that details the contents of the shipment. Groupon shall have an obligation to accept only the exact items and quantities set forth in the applicable Purchase Order. The following information must appear on each packing list:
 - i. SHIP FROM (complete name and address of the shipping location);
 - ii. SHIP TO (complete name and address of receiving warehouse);
 - iii. DATE SHIPPED (date product is loaded onto a truck from your shipping location);
 - iv. PURCHASE ORDER INFORMATION (Purchase Order number, description of Goods, UPC(s), carton count, total weight, number of pallets and number of units of Goods); and
 - v. SHIPPER/CONSIGNEE NAMES AND SIGNATURES.
- b. In loading shipments, pallets must be positioned to face the rear of the trailer, so as to allow for pallet jack entry (no side loaded pallets).
- c. Loads must be secured to avoid shifting and damage.

- i. Trailers not meeting these standards may be refused or charged with special handling rates.
- ii. Applicable fees apply to carton floor loads.

4. Shipment Scheduling.

- a. To verify the Ship-From Location and warehouse point of contact information and to schedule a delivery appointment please visit the Groupon Freight Portal through the URL listed in the Purchase Order by 12:00 PM CST of the Ship-By Date and complete the requested form. Allow 2-3 hours for processing time from time of form submission, after which, you will receive either UPS labels or a Bill of Lading from Groupon.
- b. You will receive reminders from the Groupon Freight team to visit the Groupon Freight Portal to verify the information above every day that an entry to the Freight Portal is not confirmed. If you do not respond after 24 hours, the reminders will escalate. If you do not respond within 48 hours, your Purchase Order may be cancelled.
- c. You must notify Groupon's freight provider of pick-up via the Groupon Freight Portal by 12:00 pm CST the day before pick-up. All pick-up windows should be 3 hours; and someone must be available throughout the entire scheduled pick-up window. If for any reason a pick-up does not occur by the Ship-By Date, please contact your Groupon Account Manager immediately to discuss next steps.
- d. Information our logistics provider will need from you upon scheduling pick-up:
 - i. Weight of each package of Goods (in lbs.);
 - ii. Quantity of packages;
 - iii. Piece count (pallets);
 - iv. Carton count;
 - v. Delivery date and time frame;
 - vi. Complete name and address of origin (i.e., shipping location);
 - vii. Origin contact information, such as email and phone numbers;
 - viii. Hours of operation;
 - ix. P/U #;
 - x. Clear directions or instructions for trucking companies; and
 - xi. Additional information and special instructions of any kind (i.e., hazardous material, forklift required, etc.).

Groupon Carton Label

Purchase Order Number

PACKS/UNITS

12 units

Product
Description
(Product, Color, Size)

2 of 5 cartons

Style or Model #:

ATB62002

Scanable UPC:



UPC #

8 12799 01993 0