



Tatex Online Partner Packet

Choose a layout:  Holiday  Occasions

Dealer Account # \_\_\_\_\_ Dealer Name \_\_\_\_\_

Once all information is received, allow 2 weeks to setup your site. Go to demo.tatexoccasions.com to view an example of a site. Any omissions will result in a delay of your site setup.

**URL CHOICE/WEB ADDRESS:**

You can put a link from your homepage to your Tatex Occasions site or you can make this Tatex site your homepage! Put your business name in the space below or what you'd like your website to be called (ex: dealername.tatexoccasions.com)

1st Choice: \_\_\_\_\_ .tatexoccasions.com

2nd Choice: \_\_\_\_\_ .tatexoccasions.com

**DISCOUNT OPTION:**

You can offer your customer a discount on their total purchase price. Tatex will not pass this same discount on to you. You will be billed the wholesale price.

- 1. Site Discount:  Yes  No If yes, specify discount \_\_\_\_\_ %
- 2. Would you like to offer an item discount for any of the product links on the home or secondary pages?  
 Yes  No

If yes, please list the product link and the percent you want discounted (Ex: Wedding Ensembles 5%)

**NOTE:** If you have a site discount as well as an item discount, both will be taken off the initial price: \_\_\_\_\_

**BILLING OPTIONS:**

You will bill your customer first and Tatex will bill you when the order is placed. The URL to approve the orders is http://dealer.orders.com. Please keep this information for your future approval needs. Please refer to the Addendum to License Agreement located at http://www.tatexoccasions.com.

**COMPANY HEADER:**

You can include a company logo on your T.O.P. site. The file is limited to size 200 X 50 pixels at 72dpi. Please send your correctly formatted logo in .jpg file format to us at info@tatexoccasions.com.

File name: \_\_\_\_\_

You may also select to have  Business Name  Nothing

**SITE COLORS:**

Color selections can be found at http://www.tatexoccasions.com or provide us with the RGB color codes. Font colors and background colors must contrast or the wording will not display properly. *We recommend selecting site colors that match your company logo.*

Menu Bar \_\_\_\_\_ Decorative Bar \_\_\_\_\_

Menu Font \_\_\_\_\_ Header \_\_\_\_\_

Background \_\_\_\_\_ Header Font \_\_\_\_\_

**NAVIGATION LINKS:**

Please indicate by checking the navigation links you wish to display on your site. \*These links are at the top of each page.

About Us  Contact Us  Samples  Reciprocal Link

**Product Links:**

Wedding    Graduation    Holiday    All Occasions

**About us:**

Use this section to provide information about your company to your customer. If you have this section on your current web page, please provide a link and we will copy it to your T.O.P. site. If you do not, please add an additional page with the correct verbiage for your About Us page. Link: \_\_\_\_\_

**Customer Service and contact us information:** (Click the contact link on the navigation bar within the demo to view layout.)

Customer Service Telephone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Your business days and hours: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Order Confirmation E-mail: \_\_\_\_\_

**Credit Cards Accepted**

Check the options you want to offer on your site.

Visa    MasterCard    Discover    American Express    In-Store Payment    PayPal

**Sample Email:**

Would you like to send your customer a follow up email after they request a sample?  Yes    No

**Reciprocal Link:**

Do you already have a website for your business that you drive traffic to? You can add a link on the navigation bar of your Tatex occasions site (next to Home, About, Contact), which will take your customer from your Tatex occasions site to your main website. This feature will be seen on all your pages for the customer's convenience.

\*Note: Try to name the link something other than "home." (ex: "Back to \_\_\_\_\_")

Do you want the Reciprocal Link?  Yes    No

If yes, what would you like the link to be called? \_\_\_\_\_ (Maximum of 28 characters)

What address should the link connect to? \_\_\_\_\_

Please read and sign below:	
I understand the details covered in this packet and that all information I have filled out is correct.	
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Name and Title	<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> Date

Please complete this form before submitting.

Fax completed packet to (800) 521-8576.

For general questions about setting up your T.O.P site or more information about Tatex, call (866) 800-5303 or check us out online at [www.tatex.com](http://www.tatex.com).

Mailing address:  
Tatex Thermographers  
2800 Gholson Road  
Waco, TX 76704

**FOR OFFICE USE ONLY!**

Tatex Account #	_____
Password (Pin#)	_____
Dealer Zip Code	_____
Credit Code	_____

**Tatex (Licensor)**  
**LICENSE AGREEMENT (“Agreement”)**  
**2800 Gholson Road, PO Box 2660**  
**Waco, TX 76702-2660**

**Retailer:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City:** \_\_\_\_\_  
**State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone No.:** \_\_\_\_\_  
**Fax No.:** \_\_\_\_\_  
**E-Mail Address:** \_\_\_\_\_

1. This Agreement incorporates by reference: (i) the Standard Terms and Conditions in effect on the date set forth below and found at [http: www.tatex.com](http://www.tatex.com) ; ii) the wholesale Addendum as posted at [http: www.tatex.com](http://www.tatex.com) ; (iii) any amendments to the Standard Terms and Conditions or any applicable addendum posted by Licensor at [http: www.tatex.com](http://www.tatex.com) effective ten (10) days following the date posted; and (iv) the Tatex™ Rebrand Packet (collectively, the “Agreement”). Retailer acknowledges that it has read and agrees to be bound by the Standard Terms and Conditions and corresponding Addendum. This Agreement shall become effective on the date executed by Licensor (the “Effective Date”).
2. Licensor has developed and operates a method of doing business that includes certain trademarks, computer software, a Goods Catalogue for products and an HTML template (all defined in the Standard Terms and Conditions) whereby customers can order products and services over the World Wide Web portion of the Internet (collectively the “System”), all of which are owned by Licensor.
3. Retailer desires to license from Licensor the System to permit Retailer’s customers (“Customers”) to place orders for custom imprinted paper products through Retailer’s branded website and for such Customer orders to be filled exclusively by Licensor or its designated affiliates and subcontractors.
4. Licensor will, according to its Standard Terms and Conditions, create and host on its server an Internet based website for use by Retailer and/or Retailer’s Customer (“Customer”) to place orders for blank and custom imprinted social stationery and accessories. The standard website includes a catalogue of Licensor goods (“Goods Catalogue”) created for Customer from which Retailer or Customer may select items to order; a Customer order interface to permit Retailer or Customer to place orders from the Goods Catalogue; a statement of terms and conditions for sales; and visual and textual information in English that Licensor may customize for Retailer for an additional charge.
5. Retailer agrees to pay Licensor for all ordered products within thirty (30) days of the invoice date. Any amounts unpaid after thirty days will bear interest at the lower of (i) the highest rate allowed by law; or, (ii) one and one-half (1.5%) per month or portion thereof.
6. Retailer authorizes Licensor to contact Retailer for commercial purposes via fax, telephone, or e-mail at the phone numbers and/or e-mail addresses set forth above.

**Retailer:** \_\_\_\_\_  
**By (Sig.):** \_\_\_\_\_  
**Its (Title):** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Licensor:** \_\_\_\_\_  
**By:** \_\_\_\_\_  
**Its:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

# **ADDENDUM TO LICENSE AGREEMENT**

(Wholesale)

This Addendum ("Addendum") is incorporated by reference into the License Agreement by and between Licensor and Retailer.

## **1. Prices and Goods Catalogue**

**1.1 Wholesale Prices.** Licensor may change any and all of its wholesale prices for products in the Goods Catalogue at any time. Increased prices for all products shall not apply to purchase orders accepted prior to the effective date of the price change. Price decreases with respect to all products shall be effective immediately upon written notice to the Retailer on all orders received after the date of the notice.

**1.2 Retail Prices.** The Retailer Interface will be configured to include Licensor's online Goods Catalogue and Licensor's suggested retail price to the Customers for the goods. Retailer retains ultimate control to determine the actual retail price to be paid by the Customers for the goods and may invoice Customers at retail pricing different from that reflected in the Goods Catalogue. Retailer is also free to reflect discounts, allowances, surcharges and other matters not reflected in the Goods Catalogue.

**1.3 Goods Catalogue.** Licensor reserves the right, in its sole discretion and without incurring any liability to the Retailer or Customers, to: (a) alter the specifications for any products in the Goods Catalogue; (b) discontinue the manufacture or availability of any products in the Goods Catalogue; (c) discontinue the development of any new product, whether or not such product has been announced publicly or is included in the Goods Catalogue; or (d) commence the manufacture and sale of new products having features which make any product in the Goods Catalogue wholly or partially obsolete, whether or not the Retailer is granted any distribution rights in respect of such new products. Notwithstanding the above, Licensor shall fill all accepted purchase orders from the Customers for any such altered or discontinued products of which manufacturing and commercial deliveries have commenced. Any access to the Retailer Interface after the effective date of any amendment to the Goods Catalogue shall serve as Retailer's agreement that its Customers' transactions be governed by the amended Goods Catalogue.

## **2. Customer Transactions**

**2.1 Ordering and Fulfillment.** Licensor shall collect all data necessary to process and fulfill Customer orders received through the Retailer Interface. Licensor shall make available Customer order information as provided in Section 2.2 of the Standard Terms and Conditions and Retailer shall review such information at least once per business day indicating for each order whether Licensor is authorized to fulfill such order.

**2.2 Payments.** Retailer will collect payment for all orders placed by Customers, including without limitation, the retail price, and, if applicable, taxes, shipping and handling charges and credit card transaction fees for each order. Retailer will pay Licensor the wholesale price of each order authorized by Retailer to be produced without reduction for non-payment by any Customers or for any other matter.

**2.3 Shipment of Goods.** With respect to each order authorized by Retailer for fulfillment by Licensor, Retailer shall specify whether the order is to be shipped to the Customer's designated point of delivery submitted with the order. Licensor may only deliver to addresses within the United States, Canada, and other areas that Licensor elects to service. Licensor will use commercially reasonable efforts to fill and ship orders in a timely fashion or in the time frame indicated by the System. Shipping charges, if applicable, shall be specified in the System and charged to the Retailer. Licensor may reject orders with incomplete order information, incomplete shipping information or for shipment outside the United States, Canada, or other areas that Licensor elects not to service.

## **3. Taxation**

**3.1** Retailer must provide Licensor with properly executed certificates of exemption applicable to sales for resale, with respect to all online sales of Licensor products.

**3.2** Retailer assumes full responsibility for the reporting and remittance of all sales/use and other similar taxes which result from orders placed through the Retailer Interface. Furthermore, if any state or local jurisdiction should audit or assess Licensor with respect to taxes due on the sales subject to the Standard Terms and Conditions, Retailer agrees to indemnify Licensor for any liability or expense incurred by it in defending itself against any proposed or assessed liability or responding to such audit, or in settling such matters, and Retailer agrees to indemnify Licensor against any assessed liabilities.

**4. Customer Service and Returns**

**4.1** Customer service and returns will be processed through the Retailer. Retailer shall notify Licensor as soon as possible after receipt of products by Retailer or its Customer of any complaint whatsoever Retailer or its Customer may have concerning such products. If the Customer believes that the item ordered is in error, the Customer must return at least one copy of the item to the Retailer within 10 days of delivery. The Customer must show on the item returned the error and the changes the Customer wishes to have made in the item. A copy of the invoice must accompany the return. Retailer shall immediately forward all information concerning the order to Licensor.

**4.2** If the error was caused by Licensor, Licensor will, at its sole discretion, either replace the order at no charge or refund the purchase price. Licensor does not require the return of the non-conforming order in all instances. Licensor reserves the right, at its sole discretion, to require the order to be returned to Licensor before providing a replacement order or refund.

**4.3** If the Customer caused the error in the order, Licensor will redo the order at its normal wholesale cost. Retailer may adjust the final retail price at Retailer's discretion.

# STANDARD TERMS AND CONDITIONS

## TATEX AGREEMENT

### 1. Interface Development

**1.1 Interface Template.** Licensor will prepare and code for Retailer Licensor's standard interface template written in HTML. The standard interface template includes a catalogue of Licensor goods from which the Customers may select items to order ("Goods Catalogue"); a Customer order interface to permit Customers to place orders from the Goods Catalogue, a statement of terms and conditions for sales; and visual and textual information that may be customized. Retailer will provide to Licensor its artwork, and other information to permit Licensor to customize the standard interface template, such customized template to be approved by Licensor prior to its use with the System ("Retailer Interface"). Licensor's obligation to customize its standard interface template shall be limited to modification of those elements currently within the template and inclusion of materials provided by Retailer in the appropriate machine readable format specified by Licensor. If Retailer desires more extensive modifications to the Retailer Interface, Licensor will provide Retailer with a written estimate of the cost for making the additional revisions, but Licensor shall be under no obligation to make any such revisions. Licensor will allow Retailer to link pages of its Internet presence to the Retailer Interface (a "Transfer Link") through which Customers may access the Retailer Interface and System. The Retailer Interface, Goods Catalogue, System software and all other electronic elements of the System (except Retailer's Transfer Links) shall reside on Licensor's server. Licensor shall have no obligation to format the Retailer Interface in any language other than English. Any local language laws or requirements with regard to the language of the Retailer Interface shall be the responsibility of Retailer.

**1.2 Retailer's Grant of License.** Retailer grants Licensor a license to use, reproduce, prepare derivative works of, distribute, perform and display any content Retailer incorporates into the Retailer Interface ("Content"), as appropriate in association with offering Customers access to the Retailer Interface.

**1.3 Licensor's Grant of License.** Licensor hereby grants to Retailer a non-exclusive, non-transferable, revocable license to use (a) Licensor's trademarks TATEX™ [ANY OTHERS?] ("Trademarks") to the extent necessary to describe the source of the products offered for sale through Retailer's branded web site; and (b) the Interface Template, the Goods Catalogue, and other items of the system described in Section 1.1, and the System, for the purpose set forth in this Agreement ("System Licensed Materials"). Upon termination, Retailer shall immediately and permanently cease all uses of the Trademarks and the System Licensed Materials and shall return any copies of the System Licensed Materials to Licensor. Within thirty (30) days following termination, Retailer shall provide written certification to Licensor of its compliance with the provisions of this Section. Retailer acknowledges and agrees that nothing herein shall be construed as transferring any trademark or copyright rights, or any other right, title or interest in the Trademarks or in the System Licensed Materials. Licensor specifically retains all right, title and interest in the Trademarks and the System Licensed Materials except for the limited license rights granted hereunder. Retailer shall not take any action inconsistent with Licensor's rights in the Licensed Materials. Retailer agrees not to attempt to reverse engineer, decompile, or otherwise attempt to access the Trademarks and System Licensed Materials for any reason other than set forth in this Agreement. Retailer acknowledges and agrees that the Trademarks and System Licensed Materials are the exclusive property of Licensor and Retailer disclaims all interest in or to such Trademarks and System Licensed Materials and Retailer will not challenge or contest such ownership, or Licensor's use of the Trademarks and System Licensed Materials for any purpose. Notwithstanding the expiration or termination of this Agreement, Retailer's obligations under this Section shall continue in full force and effect.

### 2. System Operation

**2.1** Customers may access the Retailer Interface for the sole purpose of browsing and ordering goods from the Goods Catalogue.

**2.2 Access to Order Information.** Retailer will be able to access pending Customer order information through a secure interface. Licensor will provide Retailer with a password for accessing Customer order information. Retailer is solely responsible for protecting its password. Retailer is responsible for any activity transacted through the secure interface by persons to whom Retailer has allowed access to Retailer's password. If Retailer determines that unauthorized transactions are being made or could be made through the secure interface by persons using Retailer's password, Retailer may request Licensor to change the password to a new password and disable further access to the secure interface with the old password. Licensor shall have a commercially reasonable period to effectuate the change in Retailer's password that shall in no event be less than one business day.

**2.3 Exclusivity.** Retailer may use the Trademarks and System Licensed Materials only for the purposes set forth in this Agreement to permit Customers to browse the Goods Catalogue and to place orders with Licensor for fulfillment by Licensor. In no event shall Retailer be permitted to use the Trademarks and System Licensed Materials for any other purpose, including, but not limited to, placing or having Customers place orders with anyone else other than Licensor or for any other products other than those offered in Licensor's Goods Catalogue provided over the Retailer Interface.

### **3. Ability to Modify System and Retailer Interface**

**3.1** Licensor may modify the System as required by applicable law if Licensor, in its sole discretion, determines such modifications are necessary.

**3.2** Retailer agrees that Licensor may make any changes to the Retailer Interface that Licensor, in its sole discretion, deems required by applicable law. If Retailer refuses to cooperate in the modifications requested, Licensor may immediately (i) prevent Customers from accessing the System until such changes are made, or (ii) terminate this Agreement.

**4. Prohibited Uses of Trademarks.** Without limiting any other provision of this Agreement, Retailer agrees that it shall not use or register any of the Trademarks, or any marks confusingly similar to the Trademarks, as part of any Internet domain name, trade name, company name, or in any trademark sense except in accordance with the limited license rights granted hereunder. Retailer further agrees that it shall not, either during the term of this Agreement or otherwise, create or cause to be created any Internet web sites that operate to criticize Licensor or any of its products, services, or practices.

### **5. Term and Termination**

**5.1** This Agreement shall commence as of the Effective Date of the Agreement and shall continue in effect until terminated by either party upon thirty (30) days notice.

**5.2** Either party may terminate this Agreement upon 30 days notice without cause. Licensor may terminate this Agreement immediately if Retailer fails to pay invoices when due.

**5.3** Licensor may terminate this Agreement immediately if: (a) Licensor, in its sole discretion determines Retailer's Internet presence or any Transfer Link on Retailer's Internet presence contains any material that is pornographic, obscene, immoral, depraved, potentially illegal, or that potentially exposes Licensor to any liability or prejudice of any type; (b) Retailer attempts to gain unauthorized access to any portion of the System or if Retailer attempts to reverse engineer any portion of the System; (c) Retailer fails to make any payment when due to Licensor; (d) Licensor, in its sole discretion, determines that

Retailer is using the Trademarks in any manner that creates a likelihood of confusion or mistake as to the nature of the relationship between Licensor and Retailer, or is in any other manner inconsistent with the limited license rights granted hereunder; or (e) any breach of this Agreement by Retailer.

## **6. Effect of Termination**

**6.1 Remove Retailer Interface.** Upon termination, Retailer will immediately disable any connections between any Transfer Link and the Retailer Interface. Licensor may disable the Retailer Interface upon termination so no further Customer orders are received. Retailer will also immediately remove all references to the System in its promotional and sales literature and materials, including, but not limited to, any references to the Trademarks or System on Internet sites it controls.

**6.2 No New Sales.** Licensor may refuse or accept, at its sole discretion, any order received after the notice of termination but before the disabling of the Transfer Links and Retailer Interface. Any Customer orders accepted by Licensor shall be processed in accordance with Section 2 (System Operation) of the Agreement.

**6.3 No Further Compensation.** In the event either party terminates this Agreement for any reason in accordance with the terms hereof, the parties hereby agree that, without prejudice to any other remedies which either party may have in respect of any breach of this Agreement, neither party shall be entitled to any compensation, reimbursement or like payment from the other as a result of such termination.

## **7. Confidential Information**

**7.1 “Confidential Information”** means all non-public information and ideas, including, but not limited to, information regarding a party’s business, financial condition, operations, products, services or finances, disclosed by such party (either orally or in writing) to the other party. Licensor and Retailer may have previously exchanged and may exchange certain Confidential Information for the implementation of the System, the design thereof, and any modification thereof. It is the intention of Licensor and Retailer that this information shall be used by the other party solely for the purpose of implementing the System and for no other purpose. Each party shall endeavor to designate any information or ideas it communicates to the other party which it, in good faith, believes constitutes “Confidential Information” by marking it as Confidential. Such designation is for informational purposes only and the designation, or lack thereof, is not determinative of the confidential nature of the information.

**7.2 Non-Disclosure.** No party and no representative of a party shall disclose to any other person or use the Confidential Information without the prior written consent of the other party. In addition, no party and no representative of a party shall, without the prior written consent of the other party, disclose to any other person (a) the fact that Confidential Information has been made available; (b) that the parties are engaged in any business transaction; or (c) any of the terms, conditions or other facts with respect to this Agreement, including, without limitation, the fact that the Agreement exists.

**7.3 Return of Confidential Information.** In the event that this Agreement is terminated, no party and no representative of a party shall use, for any purpose, any of the Confidential Information now or hereafter received or obtained from the other party or its Representatives. All Confidential Information (and all copies, summaries, and notes or the contents or parts thereof) shall be returned to the disclosing party within thirty (30) days of termination and shall not be retained by the other party or its representatives in any form or for any reason.

**7.4 Exclusions.** A party or its representative may retain, disclose or otherwise use Confidential Information to the extent that such Confidential Information (a) shall have been made public other than through acts of, or attributable to, such party or its Representatives in violation of this Agreement; (b) is required to be disclosed by law; or (c) has been independently developed by such party or its Representatives without violating any obligations under this Agreement. If any governmental agency or any third party shall seek in any way to discover or otherwise gain access to, or production of ("Discovery") any Confidential Information or any other data or records of one party that may be in the possession of the other party, the other party shall immediately notify the first party and shall, at the first party's written request and at the first party's expense, oppose such Discovery, and cooperate with the first party in the first party's efforts to preclude, quash, limit or impose protective orders or similar restrictions on such Discovery.

## **8. Retailer's Warranties**

**8.1** Retailer has sufficient right, title and interest in and to the Content to enter into and perform this Agreement and to grant the license rights granted to Licensor.

**8.2** Neither the Content, nor any part thereof, infringes any patent, copyright, trademark, service mark or other proprietary right of any third party and Retailer has not been notified by any third party of any possibility or allegation that any Content, or part thereof, might infringe any third party rights.

## **9. Licensor's Warranties**

**9.1 THE SYSTEM.** LICENSOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE UNINTERRUPTED, SECURE OR ERROR FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSOR DOES NOT MAKE ANY WARRANTY AS TO THE SYSTEM OR THE RESULTS TO BE OBTAINED FROM USE OF THE SYSTEM. THE SYSTEM IS PROVIDED AND USED ON AN "AS-IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY FOR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE INTERNET OR USE OF INFORMATION IN CONNECTION WITH THE SYSTEM.

**9.2 INTERNET.** RETAILER DOES AND SHALL HAVE CUSTOMERS ACKNOWLEDGE THAT IN CONNECTION WITH THE SYSTEM, INFORMATION WILL BE TRANSMITTED OVER LOCAL EXCHANGE, INTEREXCHANGE AND INTERNET BACKBONE CARRIER LINES AND THROUGH ROUTERS, SWITCHES AND OTHER DEVICES OWNED, MAINTAINED AND SERVICED BY THIRD PARTY LOCAL EXCHANGE AND LONG DISTANCE CARRIERS, UTILITIES, INTERNET SERVICE PROVIDERS AND OTHERS, ALL OF WHICH ARE BEYOND THE CONTROL AND JURISDICTION OF LICENSOR AND ITS SUPPLIERS. ACCORDINGLY, LICENSOR ASSUMES NO LIABILITY FOR OR RELATING TO THE DELAY, FAILURE, INTERRUPTION OR CORRUPTION OF ANY DATA OR OTHER INFORMATION TRANSMITTED IN CONNECTION WITH USE OF THE SYSTEM.

**9.3 Warranty on Products.** Unless otherwise provided by law, Licensor warrants that the products shall be free from defects in material and workmanship for a period of sixty (60) days from the date of purchase by the Customer. EXCEPT FOR THE FOREGOING, LICENSOR MAKES NO OTHER WARRANTY. THE WARRANTIES SET FORTH HERE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY LICENSOR, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE AND ALL

OBLIGATIONS OR LIABILITIES ON THE PART OF LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, REPAIR OR PERFORMANCE OF THE PRODUCTS.

## **10. Indemnification**

**10.1** Retailer, at its own cost and expense, shall defend and hold harmless Licensor and its officers, directors and agents, from any and all liability, costs and expenses (including attorneys' fees) against a claim that (i) the Content infringes the rights of any third party or (ii) Retailer's Internet presence damages or causes any injury to any third party or Licensor. Retailer shall pay any such damages, costs and expenses as they come due.

## **11. Limitations on Liability**

**11.1** IN NO EVENT SHALL LICENSOR OR ITS RESPECTIVE DIRECTORS, OFFICERS, PARENT COMPANY, AND AFFILIATES, LICENSORS AND SUPPLIERS, BE LIABLE FOR ANY LOST DATA OR CONTENT, LOST PROFITS, BUSINESS INTERRUPTIONS OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGE ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED TO THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**11.2** The maximum liability of Licensor, its directors, officers, parent company, and affiliates, to Retailer for damages relating to or arising under this Agreement shall be limited to \$500.00.

## **12. General Provisions**

**12.1 Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any event beyond the control of the affected party including, but not limited to, natural disaster, acts of God, actions or decrees of governmental bodies or failure of communication lines, but excluding employee strikes or a shortage of supplies or personnel (a "Event"), the party who has been so affected shall promptly give written notice to the other party and shall use its best efforts to resume performance. Upon receipt of such notice, all obligations under this agreement shall be immediately suspended for the duration of such Force Majeure Event.

**12.2 Notice.** All notices, demands, requests or other communications required or permitted under this Agreement will be deemed given when (i) delivered personally; (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt, or (iv) within one (1) business day after having been sent by email to the last known email address, unless otherwise indicated in this Agreement. Licensor may, at its discretion provide notice of price adjustments by e-mail or by U.S. mail and any such notice shall be effective as of the date specified therein.

**12.3 Waiver.** Waiver of any breach, or failure to enforce any term of this Agreement shall not be deemed a waiver of any breach or right to enforce which may thereafter occur. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified herein.

**12.4 Severability.** In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired and the parties will substitute a new enforceable provision of like economic intent and effect.

**12.5 Applicable Law.** This Agreement, the rights and obligations of the parties hereto, and any claims or disputes thereto, shall be governed by and construed in accordance with the laws of the State of Minnesota without reference to conflict of law principles.

**12.6 U.N. Convention.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**12.7 Compliance with Laws.** Retailer shall comply with applicable international, national, state, regional and local laws and regulations, and industry customs in conducting business through its site. Retailer shall obtain and maintain all necessary governmental and other permits and licenses that may be required for Retailer to sell Licensor goods to the Customers.

**12.8 Assignment.** Retailer shall not have the right to assign this Agreement without the prior written consent of Licensor. The transfer of a majority of the capital stock or substantially all of the assets of Retailer or a change in actual control of Retailer shall be deemed an assignment for the purposes of this section. Any purported assignment without Licensor's consent shall be void and shall be a breach of this Agreement.

**12.9 Initial Attempt to Resolve Dispute.** In the event of any dispute or disagreement between the parties either in interpreting any provision of this Agreement or about the performance of either party, then upon the written request of either party, each of the parties will appoint a designated representative to resolve such dispute or disagreement. The designated representatives will discuss (in person or by telephone) the problem and negotiate in good faith in an effort to resolve the dispute without any formal proceeding. During the course of such negotiation(s), all reasonable requests made by one party to the other for information, including copies of relevant documents, shall be honored. The specific format for such discussions will be left to the discretion of the designated representatives. If the designated representatives are unable to resolve the dispute within 30 days after their first meeting, either party may seek mediation and arbitration of the dispute as set forth in Section 12.10 below.

**12.10 Mediation and Arbitration of Dispute.** Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order, preliminary injunction or any other equitable relief to preserve the status quo or prevent irreparable harm pending the selection and confirmation of a panel of arbitrators, any dispute arising under this Agreement that cannot be resolved as set forth in Section 12.9 above shall be resolved through a mediation-arbitration approach. The parties agree to first try to resolve the dispute informally with the help of a mutually agreed-upon third party mediator. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit their dispute to binding arbitration in Minneapolis, Minnesota in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein. The arbitration may be conducted by one impartial arbitrator by mutual agreement or by three arbitrators if the parties are unable to agree on a single arbitrator within 30 days of first demand for arbitration. All arbitrators are to be selected from a panel provided by the American Arbitration Association. Upon request of a party, the arbitrators shall have the authority to permit discovery to the extent they deem appropriate. A court reporter shall record the arbitration hearing and the reporter's transcript shall be the official transcript of the proceeding. The arbitrators shall have no power to add or detract from the agreements of the parties and may not make any ruling or award that does not conform to the terms and conditions of this Agreement. The arbitrators shall have the authority to grant injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages. The arbitrators shall specify the basis for any damage award and the types of damages awarded. The decision of the arbitrators shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. The prevailing party in the arbitration proceedings shall

be awarded reasonable attorneys' fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall for good cause determine otherwise. Neither party nor the arbitrators may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties or except as required by law or court order.

**12.11 Further Assurances.** Each of the parties hereto agrees to take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further documents, and will obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement.

**12.12 Section Headings.** Section headings contained in this Agreement are inserted for convenience or reference only and shall not in any way limit or affect the meaning, construction or scope of any of the provisions hereof.

**12.13 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument.

**12.14 Relationship of the Parties.** The relationship of the parties hereunder shall be that of independent contractors. Nothing herein shall be construed to constitute a partnership between or joint venture of the parties, nor shall either party be deemed the agent of the other or have the right to bind the other in any way without the prior written consent of the other.

**12.15 No Third-Party Beneficiaries.** This agreement is solely for the benefit of the parties and their respective successors and permitted assigns, and no other person has any right, benefit, priority or interest under, or because of the existence of, this agreement.

**12.16 Jurisdiction.** All disputes arising out of or relating to this Agreement shall be submitted to the non-exclusive jurisdiction of the state and federal courts in the State of Minnesota, and each party irrevocably consents to such personal jurisdiction and waives all objections thereto.

**12.17 Survival of Provisions.** In the event of any termination of this Agreement, the following provisions of this Agreement, Sections 1.2, 1.3, 2.3, 4, 6, 7, 8, 9, 10, 11, 12.3, and 12.4, and such other provision and Section that may be specified in the Agreement, are intended to continue and survive and shall so continue and survive beyond the termination of this Agreement.

**12.18 Additional Communication by Licensor.** Retailer authorizes Licensor to contact Retailer for commercial purposes via fax, telephone or e-mail at the phone numbers and/or e-mail addresses set forth in the Agreement.

**12.19 Entire Agreement.** It is expressly understood and agreed that no employee, agent or other representative of Licensor has any authority to bind Licensor as to any statement, representation, warranty or other expression unless the statement, representation, warranty or other expression is specifically included within the express terms of this Agreement. It is expressly understood and agreed that, there being no expectations to the contrary between the parties, no usage of trade or other regular practice or method of dealing within the prevalent industry or between the parties shall be used to modify, interpret, supplement or alter in any manner the express terms of this Agreement or any part thereof. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties.