

# **{{location.name}}: Consignment Agreement**

THIS CONSIGNMENT AGREEMENT, dated as of (this “Agreement”), is entered into between , a (“Consignor”), and {{location.name}}, a {{location.state}} Limited Liability Company (“Consignee”), and together with Consignor, the “Parties”, and each, a “Party”).

WHEREAS, Consignor is in the business of manufacturing product (the “Goods”);

WHEREAS, Consignor wishes to deliver certain quantities of Goods to Consignee from time to time on a consignment basis for the purpose of resale by Consignee to third parties (the “Consigned Goods”); and

WHEREAS, Consignee is willing to purchase and accept the Consigned Goods from Consignor pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **1. Consignment of Goods.**

1.1 Consignment for Resale. Consignor shall deliver to Consignee the Consigned Goods for the purpose of resale by Consignee to its customers (“Customers”). Consignor shall deliver the Consigned Goods to Consignee’s facility located at {{location.full\_address}} (the “Facility”). All delivery and sale of Consigned Goods will be on a consignment basis, in accordance with the provisions hereof.

1.2 Consignment Confirmations. Consignor shall issue to Consignee a confirmation of consignment (“Consignment Confirmation”) which shall set forth specific terms of consignment, including the quantity and nature of the Consigned Goods.

1.3 Terms of Agreement Prevail Over Consignor’s Consignment Confirmation. The terms of this Agreement prevail over any terms or conditions of Consignee or Consignor contained in any other documentation. In the event of any conflict between the terms of this Agreement and any Consignment Confirmation, the terms of this Agreement prevail.

1.4 Storage of Consigned Goods at the Facility. Consignee shall store all Consigned Goods in the Facility in such a manner as to protect them from damage or deterioration.

1.5 Monthly Consignment Fee (aka “Membership Fee”). For each month that this Agreement is effective, the Consignor agrees to pay to the Consignee a non-refundable fee (“Consignment Fee”) equal to the amount specified in Exhibit A, not later than the first day of the month in advance.

## **1.6 Commission and Discounts.**

1. For each item the Consignee sells on behalf of the Consignor, the Consignee shall earn a variable commission (“Commission”) in accordance to the terms outlined in Exhibit A.
2. The Consignor will be offered a commission discount in accordance to the terms of Exhibit A.

1.7 Shipping and Deliveries. All shipments shall be sent FOB, {{location.name}}, {{location.full\_address}} or other locations dependent upon manager approval. All shipments must be preapproved by Consignee. Any shipments which have not been preapproved will be returned to the Consignor at its expense and risk.

## 2. Title and Risk of Loss.

2.1 Title Retained by Consignor. Consignor shall retain title to the Consigned Goods unless and until they are purchased by Consignee at the time of resale to a Customer. When Consignee resells the Consigned Goods to a Customer, title to the Consigned Goods shall pass from Consignor to Consignee and immediately thereafter from Consignee to the Customer.

2.2 Risk of Loss Passes Upon Sale. Consignor assumes the risk of loss, theft or damage to the Consigned Goods until they are purchased by Consignee at the time of resale to a Customer.

2.3 Damaged Goods. Consignee with notify Consignor of any damaged goods in store via email or phone. Consignor must reply to Consignee about damaged goods and next steps within 14 days. If no communication is received by Consignee, or Consignor fails to pick up items, items will become property of the Consignee to mark down at Consignee's discretion, donate, or discard.

3. True Consignment. This Agreement is intended to be a true consignment agreement and the consignment created hereunder is intended to be a true consignment, where title to the Consigned Goods remains with Consignor until purchased by Consignee immediately before being resold to a Customer on terms acceptable to Consignor.

4. Liens and Encumbrances. Consignee shall maintain the Consigned Goods free and clear of and from and against all liens and encumbrances of any nature whatsoever.

## 5. Price and Discounts.

5.1 Consignee shall purchase the Consigned Goods from Consignor at the prices set forth in Consignor's price list in effect at the time that Consignor issues the related Sales Confirmation or as otherwise agreed in writing between Consignor and Consignee.

5.2 Notwithstanding the preceding the section, Consignee may in its sole discretion and without consulting the Consignor offer Consigned Goods at a discount equal to not more than 30% (thirty percent), based upon product status as follows:

0-30 days on shelf with no sales: 10% discount

30-60 days on shelf with no sales: 20% discount

60+ days on shelf with no sales: 30% discount

PLEASE NOTE: All seasonal items can be discounted up to 30% off within one week of the holiday, without notice to consignor. Such discounts will be reflected in the Sales Confirmation and deducted from the Consignor's total sales. One exception to this limit is applied to Damaged Goods (see Section 2.3).

6. Payment Terms. No later than thirty (30) days after the end of the month, Consignee shall pay to Consignor the amount appearing on the portal documentation by electronic funds transfer or check of immediately available funds to an account designated by Consignor.

7. Consignee's Responsibilities.

7.1 Consignee shall:

1. Clearly and conspicuously label the Consigned Goods as property of Consignor; and
2. Secure and protect the Consigned Goods stored in the Facility from loss or damage using the same degree of care that Consignor uses to protect its own products and stock, but in no event less than a commercially reasonable degree of care; and
3. Consignee shall have sole responsibility for merchandising Consigned Goods in the retail shop. Consignors shall not change or modify merchandising without the express agreement, in advance, of the Consignee; and
4. Consignee shall have sole responsibility for managing and updating the in-shop inventory.

7.2 Records. Consignor shall be responsible for adding Consigned Goods (new "Product Listings") to the Shopify maker portal. Once Consigned Goods are uploaded and confirmed between Consignor and Consignee, Consignee shall keep a true record of all Consigned Goods in its possession and shall give representatives of Consignor access to such records during business hours. Consignee shall permit such representatives, during business hours, to make inventories of the Consigned Goods in the possession of Consignee.

8. Return of the Consigned Goods. The Consigned Goods shall at all times be subject to the direction and control of Consignor, and on Consignor's demand for the return of any Consigned Goods delivered under this Agreement and not theretofore purchased by Consignee, Consignee shall promptly return such goods in accordance with Consignor's reasonable instructions. In addition, Consignee may return any Consigned Goods that it is unable to resell to Customers. If product does not sell within 90 days, product may be returned to Consignor, with consignor to pay for shipping charges. If product removed from floor is not picked up or shipped within 30 days, product may be disposed of at Consignee's discretion. Consignor shall bear the risk of loss and the expense of returning any Consigned Goods.

9. No Authority To Act For Consignor. Consignee shall conduct all of its business relating to the processing of the Consigned Goods in Consignee's name and at Consignee's cost and expense, and nothing herein shall authorize or empower Consignee to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of Consignor, or to bind Consignor in any manner, or to make any representation, warranty, or commitment on behalf of Consignor, this Agreement being limited solely to the consignment of the Goods herein specified.

10. Term; Termination.

10.1 Term. Unless earlier terminated pursuant to Section 10.2, this Agreement shall run for the {{document.Term}} term.

10.2 Termination for Cause. Consignor may (i) terminate this Agreement upon written notice to Consignee or (ii) delay or cancel any shipment under this Agreement if:

(a) Consignee breaches any provision of this Agreement and such breach is not cured by Consignee within ten (10) days after Consignee's receipt of written notice of such breach; or

(b) if Consignee (i) becomes insolvent or is generally unable to pay its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.3 Termination. Consignee may terminate this agreement at any time, for any reason, by providing 7 days written notice and returning to the consider all the unsold merchandise that is subject to this agreement.

10.4 Termination for Convenience. Consignor may terminate this agreement at its convenience at any time during the term provided that, i) It provides the Consignee with not less than 30 days written notice, and ii) pays a termination fee equal to two months Consignment Fee.

10.5 Effect of Termination. In the event of any such termination under Section 10.2 or on the expiration of this Agreement pursuant to Section 10.1 hereof:

(a) all unsold Consigned Goods shall be returned or shipped by Consignee to Consignor, at Consignor's cost, during the thirty one (31) day period immediately following the delivery of all shipping information and pre-paid labels;

11. Representations and Warranties. Consignee represents and warrants to Consignor that:

(a) it is a limited liability company duly organized, validly existing and in good standing in the jurisdiction of its organization;

(b) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required;

(c) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

(d) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the Consignee;

(e) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of Consignee, enforceable against Consignee in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity; and

(f) it is in material compliance with all applicable laws relating to this Agreement, the Consigned Goods and the operation of its business.

12. No Liability for Consequential or Indirect Damages. IN NO EVENT IS EITHER PARTY OR ITS REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER THE DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13. Mutual Insurance Obligations. During the Term, each Party shall, at its own expense, maintain and carry in full force and effect, subject to appropriate levels of self-insurance, commercial general liability (including product liability) in a sum no less than \$100,000 with financially sound and reputable insurers, and upon the other Party's request, shall provide the other Party with a certificate of insurance evidencing the insurance coverage specified in this Section 13.

14. Miscellaneous.

14.1 Entire Agreement.

(a) Subject to Section 1.3, this Agreement, including all related exhibits together with any applicable Sales Confirmation, constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

(b) Without limitation of anything contained in Section 14.1(a), each Party acknowledges that except for the representations and warranties contained in Section 10, neither Party has relied on any other express or implied representation or warranty, either written or oral, on behalf of the other Party, including any representation or warranty arising from statute or otherwise in law.

14.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section 14.2). All Notices must be delivered by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only on receipt by the receiving Party.

Notice to Consignor:

Notice to Consignee:

{{location.address}}

{{location.city}}, {{location.state}} {{location.postal\_code}}

Attention: {{location\_owner.first\_name}} {{location\_owner.last\_name}}

14.3 Interpretation. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any

instrument to be drafted. The exhibits, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

14.4 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

14.5 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On a judicial determination that any term or provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.6 Amendment and Modification. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

14.7 Waiver.

(a) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated and does not operate as a waiver on any future occasion.

(b) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:

(i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or

(ii) any act, omission or course of dealing between the Parties.

14.8 Assignment. Consignee shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Consignor. Consignor shall not assign any of its rights or delegate any of its obligations without prior written consent of Consignee. Any purported assignment or delegation in violation of this Section is null and void. No permitted assignment or delegation relieves a Party of any of its obligations under this Agreement.

14.9 Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

14.10 No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.11 Choice of Law. This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto are governed by, and construed in accordance with, the laws of the State of Texas, without regard to the conflict of laws provisions thereof to the extent these principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Texas.

14.12 Choice of Forum. Each Party agrees that forum for any dispute arising out of the subject matter of this agreement will be in the proper courts with necessary jurisdiction in {{location.city}} County, {{location.state}}, and neither party shall seek to have any matter removed from this forum. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

14.13 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

14.14 Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent the failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") control, including the following force majeure events (each a "Force Majeure Event"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) requirements of applicable law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

By: \_\_\_\_\_

{{location.name}}

By: \_\_\_\_\_

Name: {{location\_owner.first\_name}} {{location\_owner.last\_name}}

Title: {{Title}}

## Exhibit A

### Lease and Commission Terms

Terms for 1 spot include:

The Consignment Fee specified in Section 1.5 is \$15 per month

The Commission specified in Section 1.6 is:

50% TO CONSIGNOR / 50% TO CONSIGNEE

By: \_\_\_\_\_

{{contact.name}}

By: \_\_\_\_\_

Name: {{location\_owner.first\_name}} {{location\_owner.last\_name}}

Title: {{Title}}

**Boutiqly**