

BETWEEN:

- (1) Sell4u [and
- (2) You, the Customer

WHEREAS:

- (1) The Customer has items that it wishes to sell via the Agent's website www.sell4u.com.
- (2) The Agent wishes to be appointed as the Customer's agent for the marketing and sale of the Customer's items
- (3) The Customer shall send the items to the Agent for consideration and assessment prior to listing for sale on any marketplace.

IT IS AGREED as follows:

1. **Definitions and Interpretation**

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to, or in connection with, this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

“Connected Persons” has the meaning given to that expression by Section 1122 of the Corporation Tax Act 2010;

- “Intellectual Property Rights”** means (a) any and all rights in any patents, trade marks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and
- (d) the right to sue for past infringements of any of the foregoing rights;
- “Net Sales Value”** means, in relation to any Items, the price actually charged to the customer therefor (less any discounts or allowances in respect thereof);
- “Items”** means such Items of the kind referred to in Schedule 1 as are [manufactured or] sold by or for the Customer and of any other kind [manufactured or] sold by or for the Customer as may be notified from time to time in writing by the Customer to the Agent;
- “the Regulations”** means (unless expressly stated otherwise) the Commercial Agents (Council Directive) Regulations 1993 as amended from time to time;
- “Term”** means the term of the agency and of this Agreement as defined in Clause 9; and

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
- 1.2.1 “writing”, and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
- 1.2.4 a Schedule is a schedule to this Agreement;
- 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule; and
- 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

- 1.4 References to either gender shall include the other gender.
- 1.5 Words imparting the singular number shall include the plural and vice versa.

2. Appointment of Agent

- 2.1 The Customer hereby appoints the Agent as its agent for the sale of Items, the Agent hereby agrees to act in that capacity, subject to the terms and conditions of this Agreement.
- 2.2 The Agent shall at all times act dutifully and in good faith in all relations and dealings with and on behalf of the Customer.

3. Agent's Obligations and Method of Sale

- 3.1 The Agent shall use commercially reasonable endeavours to find and obtain customers for the Items, and shall be entitled to enter into contracts for the sales of the Items on behalf of the Customer, without prior reference to the Customer.
- 3.2 The Agent shall in all dealings concerning the Items describe itself an "Agent" for the Customer
- 3.3 All Sales of the Items by the Agent shall be made on such terms and conditions as the Agent may approve from time to time, and at prices equivalent to the Customer's standard price list from time to time in force for wholesale or retail sales (as the case may be), subject to such discounts or other deductions as the Customer may from time to time allow.
- 3.4 Title in and to the Items shall at no time pass to the Agent
- 3.5 The Agent shall:
 - 3.5.1 keep the Customer fully informed of all sales
 - 3.5.2 comply with all reasonable instructions given by the Customer.
- 3.6 The Agent shall (at its own cost and expense) be responsible for:
 - 3.6.1 promoting and advertising the Items to such extent as the Customer may reasonably require;
- 3.7 The Agent shall issue invoices for all sales of the Items pursuant to this Agreement, collect and keep in a separate bank account monies in respect of such sales and account to the Customer therefor in accordance with sub-Clause 6.3.1.
- 3.8 The Agent reserves the right to reject any items supplied by you for any reason. In the event that any item is rejected, you will need to pay for any shipping costs (as per clause 6.5) for returning that item. The shipping costs must be paid prior to the items being returned.
- 3.9 The Agent shall promptly inform the Customer of:
 - 3.9.1 any complaint or after-sales query concerning the Items which is received by the Agent;;
 - 3.9.2 all applicable laws or regulations in the Territory concerning the Items of which it becomes aware; and
- 3.10 The Agent shall not:

- 3.10.1 make any modifications of the Items without the Customer's express consent;
- 3.10.2 alter, remove or tamper with the marks, trademarks, numbers or other means of identification on the Items;
- 3.10.3 make any representations, warranties, or guarantees in relation to the Items without the express written consent of the Customer

4. Intellectual Property

- 4.1 The Agent shall promptly and fully notify the Customer of:
 - 4.1.1 any actual, threatened or suspected infringement in the Territory of any Intellectual Property Rights belonging to the Customer which comes to the Agent's attention; and
 - 4.1.2 any claim by any third party so coming to its notice that the importation of the Items into the Territory, or their sale therein, infringes the Intellectual Property or other rights of any other person.
- 4.2 The Agent shall, at the request and expense of the Customer, do all such things as may be reasonably required to assist the Customer in taking or resisting any proceedings in relation to any infringement or claim so notified under sub-Clause 4.1.
- 4.3 Nothing in this Agreement shall give the Agent any rights in respect of any trade names or trade marks used by the Customer in relation to the Items or of the goodwill associated therewith, and the Agent hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in the Customer.
- 4.4 The Agent shall not use in the Territory any trade marks or trade names so resembling the Customer's trade marks or trade names as to be likely to cause confusion or deception.
- 4.5 The Agent shall, at the expense of the Customer, take all such steps as the Customer may reasonably require to assist the Customer in maintaining the validity and enforceability of the Intellectual Property Rights belonging to the Customer during the continuance of this Agreement [provided that the Customer shall indemnify the Agent against all costs, claims, damages, expenses or other liabilities arising from or in connection with such steps].
- 4.6 Without prejudice to the right of the Agent or any third party to challenge the validity of any Intellectual Property Rights belonging to the Customer, the Agent shall not do or authorise any third party to do any act which would or might invalidate or be inconsistent with the Intellectual Property Rights of the Customer and shall not omit or authorise any third party to omit to do any act which, by its omission would have that effect or character.

5. Customer's Obligations

The Customer shall:

- 5.1 act dutifully and in good faith in all relations and dealings with the Agent;
- 5.2 honour any contracts for the sale of the Items entered into by the Agent pursuant to this Agreement; and

- 5.3 indemnify the Agent against any liability which it may incur by reason only of its being held out as the Customer's agent.

6. **Our Fees & Shipping Fees**

- 6.1 Any sale of items on any of our marketplaces will mean that we are entitled to 1/3 of the sale price as commission.
- 6.2 In addition to the commission we recover, we are also entitled to deduct any marketplace transaction fees that will be charged. These charges will be the same as if you had sold the item yourself.
- 6.3 Marketplace costs are as follows: For items sold on eBay, 12%. For items sold on an alternative marketplace the fees may differ due to the marketplaces terms and preferences. Any difference in the fees will be communicated to you via email.
- 6.4 Payment charges: 20p + 4% when the buyer pays by Paypal or Credit card. Otherwise free of charge

7. **Confidentiality**

- 7.1 Each Party undertakes that, except as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement
- 7.1.1 use reasonable endeavours to keep confidential all Confidential Information;
- 7.1.2 not disclose any Confidential Information to any other person;
- 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;
- 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
- 7.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of the provisions of sub-Clauses 7.1.1, 7.1.2, 7.1.3 or 7.1.4.
- 7.2 Either Party may:
- 7.2.1 disclose any Confidential Information to:
- 7.2.1.1 any sub-contractor or supplier of that Party;
- 7.2.1.2 any governmental or other authority or regulatory body; or
- 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons;
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in 7.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

- 7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that party, provided that in doing so that party does not disclose any part of that Confidential Information which is not public knowledge.
- 7.3 The Agent may:
- 7.3.1 disclose any Confidential Information to:
- 7.3.1.1 any customers or prospective customers;
- 7.3.1.2 any governmental or other authority or regulatory body; or
- 7.3.1.3 any employees of the Agent or of any of the aforementioned persons;
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as is required by law, subject in each case to the Agent using reasonable endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made; and
- 7.3.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that:
- 7.3.2.1 it or any part thereof is at the date of this Agreement, or at any time hereafter and through no fault of the Agent becomes, public knowledge (provided that in doing so the Agent shall not disclose any Confidential Information which is not public knowledge); or
- 7.3.2.2 it or any part thereof can be shown by the Agent, to the reasonable satisfaction of the Customer, to have been known to it prior to such disclosure.

8. **Force Majeure**

- 8.1 For the purposes of this Agreement "Force Majeure" means, in relation to either Party, any circumstances beyond the reasonable control of that Party (including, but not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question).
- 8.2 If any Force Majeure occurs in relation to either Party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other Party as to the nature and extent of the circumstances in question.
- 8.3 Neither Party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party. The time for performance of any obligation so affected shall be extended accordingly.
- 8.4 If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period in excess of 3 months the Parties shall enter into bona fide discussions with a

view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable

9. **Withdrawal of Items**

- 9.1 If you decide to withdraw an item from one of our marketplaces for whatever reason, we will charge a withdrawal fee of £25.00. This fee must be paid before the item(s) are returned to you.
- 9.2 The withdrawal fee includes any and all postage fees for returning the item(s) to you.
- 9.3 You cannot withdraw an item once a sale has been agreed, you will need to contact the buyer of the item and we will play no part in negotiations.
- 9.4 Any transaction or marketplace fees must be paid prior to the item(s) being returned to you.

10. **Post-Termination Indemnity**

- 10.1 In accordance with the requirements of Regulation 17 of the Regulations, the Parties hereby agree that, in the event of termination, the Agent shall be entitled to be indemnified, not compensated.
- 10.2 The Agent must inform the Customer of his intention to pursue his entitlement to an indemnity within one year of the termination of this Agreement. Failure to do so shall void the Agent's entitlement to the indemnity.

11. **Exclusion of Indemnity**

No indemnity shall be payable where:

- 11.1 The Customer has terminated this Agreement owing to any default on the part of the Agent which would justify the immediate termination of this Agreement; or
 - 11.2 The Agent has terminated this Agreement, unless such termination is justified on the grounds of:
 - 11.2.1 circumstances attributable to the Customer; or
 - 11.2.2 the age, infirmity or illness of the Agent which have resulted in his inability to reasonably continue his activities under this Agreement or be required to continue the same.
- or;
- 11.3 The Agent, with the Customer's agreement, has assigned his rights and duties under this Agreement to a third party.

12. **Data Protection**

- 12.1 All personal information that the Agent or the Customer ("First Party") may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation ("GDPR") and the rights under the GDPR of the other party being, as the case may be, either the Agent or the Customer ("Other Party") and the rights under the GDPR of any third party.

12.2 For complete details of the First Party's collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Other Party's and any third party's rights and how to exercise them, and personal data sharing (where applicable), the Other Party should refer to the Privacy Notice of the First Party.

13. **Data Processing**

13.1 All personal data to be processed by the Agent on behalf of the Customer or by the Customer on behalf of the Agent under this Agreement shall be processed in accordance with the terms of GDPR

14. **Relationship of the Parties**

14.1 The relationship of the Parties under this Agreement shall be that of agent and Customer. Nothing in this Agreement shall be construed to place the Parties in the relationship of partners, employer and employee, or joint venturers.

14.2 Neither Party shall have the right or power to obligate or bind the other in any manner whatsoever.

15. **Nature of the Agreement**

15.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) [or sub-license] any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.

15.2 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

15.3 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

15.4 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

16. **Severance**

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

17. **Notices**

17.1 All notices under this Agreement shall be in writing and be deemed duly given

if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

17.2 Notices shall be deemed to have been duly given:

17.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

17.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

17.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

17.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

18. **Law and Jurisdiction**

18.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.