

BUYING AGENCY AGREEMENT

THIS AGREEMENT (“Agreement”) is made this _____ day of _____, 20xx, by and between _____, with its principal place of business at _____ referred to hereinafter as “Buyer,” and _____, with its principal office at _____, hereinafter referred to as “Agent.”

WHEREAS, Buyer intends to use the services of Agent as its purchasing representative when Buyer makes purchases of the merchandise listed in the attached **Exhibit A**;

WHEREAS, Buyer and Agent wish to formalize the method by which they will transact business so as to ensure that both Buyer and Agent will act in this manner in the future;

NOW, THEREFORE, it is agreed that, to the extent services are requested and thereafter rendered to Buyer by Agent, such services shall be rendered strictly in accordance with the terms of this Agreement.

1. Appointment and Authorization of Buying Agency

Buyer hereby appoints Agent as its non-exclusive buying agent of the merchandise listed in **Exhibit A**, (the “Merchandise”) as may be mutually agreed upon by Buyer and Agent in such countries or jurisdictions listed in the attached **Exhibit B** or as may be agreed upon from time to time (the “Territory”), effective from the date written above, to continue until the expiration of sixty days (60) from the date of mailing by either party to the other at any time, by registered mail or certified mail, of notice of cancellation of this Agreement.

Agent hereby accepts this appointment and agrees to act as same according to the terms and conditions as set forth in this Agreement. Agent agrees that it shall be entitled to no compensation after the termination of this Agreement, except for Commissions (as defined below) on any orders placed by Buyer through Agent prior to termination and shipped after termination.

Services by Agent

Agent hereby accepts the appointment described herein and agrees to perform any or all of the following services to the extent necessary to meet Buyer’s needs, including:

- a. Advise Buyer of styling, marketing, supply and manufacturing aspects of Buyer’s proposed purchase of merchandise to be imported into the United States or any other country designated by Buyer.
- b. From time to time attend fairs and research the market on behalf of Buyer to call to the attention of Buyer all new and interesting merchandise as it becomes available.



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- c. Solicit offers to sell such merchandise to Buyer, procure samples of the merchandise to be delivered in a manner specified by Buyer, and develop estimates and establish prices for the export supplier's selling price (e.g. F.O.B. port of exportation) to Buyer in U.S. dollars.
- d. Assist Buyer when its representatives visit the various manufacturers and/or suppliers to negotiate contracts or review production.
- e. Act as translator for Buyer's representatives at meetings with sellers and at other times and places where such service is necessary.
- f. Translate information furnished by Buyer and transmit such information to manufacturers so that merchandise can be produced in accordance with Buyer's specifications.
- g. Exercise no control of the price of merchandise procured for Buyer except to seek the lowest possible price for the benefit of Buyer and assist Buyer in the negotiation of purchase contracts at competitive prices and on competitive terms. Any such contracts shall remain subject to Buyer's final approval.
- h. In strict conformity with instructions and terms issued by Buyer, forward to manufacturers, on behalf of Buyer, Buyer's orders with and/or purchase for merchandise from export suppliers. Agent shall ensure that the invoices prepared in connection with such orders and/or purchases conform to Buyer's established invoicing procedures and other Buyer Compliance Program(s).

In instances where the commercial invoice for merchandise procured by Agent for Buyer is on Agent's letterhead, the actual invoice from the manufacturer-seller must be provided to Buyer at time of shipment.

- i. Inform in writing all sellers that Buyer is the actual entity for whom the merchandise is to be purchased. In no case will Agent act as seller on any purchase made by Buyer, but will act only as the Buying Agent of Buyer.

At all times Agent will act only upon the written instructions from Buyer and in the best interests of Buyer.

- j. Provide to Buyer the location, phone number and fax number of each factory where merchandise is to be produced together with a factory description, including an inventory of equipment located therein.
- k. For each purchase order, the Agent shall confirm that the factory has the capacity and capability to produce the merchandise ordered by Buyer and that that the factory conforms to Buyer's Code of Conduct and cargo security requirements. Agent shall also confirm receipt of a completed Factory Profile which has been evaluated and approved.



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- l. Inspect each shipment of merchandise before and after it is packed in condition ready for shipment to the destination country to ensure that such merchandise (1) meets Buyer's specifications as set forth in the applicable contract (and all amendments thereto) and is not defective in any respect; (2) meets the requirements and standards of the local and destination country's laws and regulations as specified in the applicable contract; (3) is packaged, labeled, priced and invoiced in accordance with the instructions set forth in the applicable contract; (4) is packaged in a manner which will ensure its safe transportation to Buyer. Agent will advise Buyer immediately of any discrepancies in (1) through (4) above.
- m. At Buyer's Request, arrange for the shipment of merchandise from the delivery point specified in Buyer's purchase contract to each designated port of entry in the designated destination country. Where merchandise is sold under terms other than "F.O.B. port or exportation," ensure that Buyer's nominated forwarder provides documentation evidencing all freight and insurance charges, as well as all other charges paid on account of Buyer.
- n. In accordance with the Instructions from buyer, use its best efforts to seek the best settlement for Buyer of claims against manufacturers.
- o. Ensure that manufacturers arrange for shipment of merchandise, and in that regard use its best efforts to ensure that manufacturers make truthful and accurate preparation of all necessary export documentation, including, but not limited to, certificates, forms, statements and any other information necessary for exportation, in accordance with the terms of the relevant purchase orders and in accordance with the Buyer's security procedures. Agent's failure to conduct such inspections and verify compliance with Buyer's cargo security requirements will constitute a material breach of this agreement and negligence by the Agent.
- p. Upon request and subject to specific instructions of Buyer, arrange for and supervise the consolidation of shipments in order to reduce shipping costs.
- q. Ensure that the genuine and true origin of all merchandise subject to this agreement is reflected on the country or origin declaration(s), including any textile visas required to accompany the shipment. As part of this function, Agent shall verify purchase and receipt of raw materials and, on regular basis, conduct random periodic inspections of work in process. Agent shall inspect finished products on a random basis, on a statistically valid basis, prior to packing, to ascertain that the merchandise meets the specifications, quality and packaging as required in Buyer's purchase order or other duly executed written instructions, verify country of origin, ensure proper labeling of the merchandise, confirm that no child, prison, or forced labor was used in the manipulation of the merchandise, and follow-up to make sure that the



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merchandise is produced and shipped according to schedule. In the event that the entry of merchandise is denied on the grounds of an incorrect origin declaration, Buyer shall be entitled, at its discretion, to withhold any commission due Agent for such shipment.

- r. Should Buyer fail to accept deliver of any merchandise for whatever reason, Agent shall use reasonable endeavors to prevent the relevant manufacturer from disposing of the rejected merchandise without removing labels, brand names or markings (logos) attached to such merchandise which relates to Buyer.
- s. The Agent shall perform the services rendered under this Agreement in compliance with the laws of the United States and any other country having jurisdiction, and in compliance with the rules and regulations of the Customs Services in such jurisdictions.

3. Letter of Credit Requirements

Certain orders or group of orders placed by Buyer may be accompanied by an Irrevocable Letter of Credit issued in the name of Seller in an amount sufficient to cover the purchase price of the merchandise as defined in this Agreement. The terms and conditions of each Irrevocable Letter of Credit will be determined by Buyer, and any actions undertaken or representation made by Agent with respect to the Letter of Credit is subject to the written approval of Buyer.

4. Invoicing Requirements

Agent shall ensure that any invoices in connection with orders and purchases handled by Agent shall contain accurate and complete descriptions of the merchandise, the names of the appropriate suppliers, the country of origin and meet all other requirements set forth by Buyer. In addition, Agent shall ensure that the designated supplier provides an invoice evidencing that the merchandise was produced for the account of, or was sold to, Buyer. Agent shall ensure that it provides to Buyer the original certified seller's invoice to accompany every shipment into the Designated Country.

5. Non-Transshipment of Merchandise

Agent agrees to familiarize itself with the Customs laws and regulations in Buyer's importing jurisdictions relating to country of origin and transshipment of goods; and Agent warrants that it will diligently use its best efforts to verify the origin of all merchandise purchased with the assistance of Agent hereunder, and shall use its best efforts to ensure that all manufacturers' statements (whether on invoices, single or multiple country declarations or otherwise) as to the country of origin of merchandise purchased by Buyer with the assistance of Agent hereunder are accurate and in



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compliance with the Customs laws of the importing jurisdiction. Agent warrants that no shipment has been illegally transshipped from any country.

6. Communication with Customs Authority

Agent agrees to notify Buyer immediately of any direct communication it, or Buyer's Suppliers, receives from any Customs service or authority in conjunction with the procuring of Buyer's merchandise, and to respond to such communication in substance and in form only as instructed by Buyer.

7. Buyers Right to Reject Merchandise

Buyer reserves the sole and exclusive power and right to accept or reject purchases proposed by Agent. Agent is not authorized to, and shall not, enter bids which may bind Buyer; nor shall Agent otherwise hold itself out as having power to bind Buyer, except as Buyer may specifically authorize in writing. All purchases shall be subject to acceptance or rejection by Buyer.

8. Provision of Assists to Manufacturer by Agent

Agent certifies that it will not furnish to the manufacturers any dies, molds, patterns, artwork, printing plates, engineering work, labor, financial assistance (except as provided below) or otherwise assist in production of the goods without the advance approval of Buyer. The cost of such items must be fully and properly disclosed on the invoice covering the purchased merchandise.

9. Definition of "Purchase Price"

As used in this Agreement, the term "Purchase Price" shall mean the export supplier's F.O.B. foreign port of exportation selling price unless a different pricing method is agreed to in writing by Buyer and the export supplier.



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10. Compensation to Agent

In consideration of the services provided hereunder to Buyer by Agent, as Purchasing Representative, Buyer agrees:

1. to pay Agent a commission equal to ____ percent (___%) of the FOB price of any Ordered Merchandise received by the Buyer. The amount of the Commission is subject to change by written mutual agreement. Such commission shall be billed to Buyer by Agent on a separate invoice and shall be payable by Buyer to Agent fifteen (15) days after receipt of the merchandise in the Buyer's delivery location in the country of importation.
2. to have the full responsibility for disclosing the terms of this Agreement and the payment of Commissions hereunder to the appropriate importing jurisdiction.
3. to reimburse Agent for the cost incurred by Agent for producing samples forwarded to Buyer at Buyer's request provided that any shipment of samples to Buyer is accompanied by an invoice reflecting all such costs. In instances where the buyer provides Agent with any assists (including, but not limited to raw materials, trims or other components) required to procure these samples, the cost of any assist must be reflected in the declared value for Customs.

The payment referred to in this section shall represent the entire compensation for Agent for services rendered on behalf of Buyer. Agent shall not be entitled to any further compensation or reimbursement.

Agent shall be responsible for all expenses incurred in connection with the performance of its services hereunder, including, by way of example, overhead expenses, rental expenses, travel expenses, and any other sales, advertising, promotional or operational expenses.

11. Responsibilities of Agent

Agent shall be responsible for all expenses incurred in connection with the performance of its services hereunder, including, by way of example, overhead expenses, rental expenses, travel expenses, and any other sales, advertising, promotional or operational expenses.



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12. Compensation of Agent Limited to Amounts Paid by Buyer

Agent warrants that it has no ownership interest in, or any control of, or any financial interest in any manufacturer making the merchandise to be purchased by Buyer with the assistance of Agent hereunder, shall not permit such relationship to be established during the term of this Agreement, shall not share Commissions with any such manufacturer, and shall not (except as provided in this Agreement) receive or accept any remuneration from any such manufacturer. Agent shall not share the compensation provided for herein with any manufacturer under any circumstances. In the event that Agent is offered compensation from a vendor and fails to notify Buyer, such failure to notify shall constitute a breach of this agreement and will be grounds for termination. Agent further warrants that it shall not maintain inventory of the merchandise in its capacity as Agent and shall not buy for its own account.

Notwithstanding the foregoing, Agent may recommend to Buyer one or more export suppliers which, in certain instances, may be affiliated with Agent subject strictly to the requirement that Agent shall have disclosed to Buyer in advance in writing the existence and nature of any such affiliation. Further, notwithstanding the foregoing, Agent may, upon receipt of Buyer's prior written consent, be compensated by a supplier for administrative services performed by Agent on behalf of supplier, provided the full details of the arrangement are disclosed and agreed to by Buyer.

13. Confidential Information

Each party, its affiliates and employees and its attorneys shall hold in confidence and not use or disclose, except as permitted by this Agreement, (i) confidential information of the other party or (ii) the terms of this Agreement, except upon consent of the other party pursuant to, or as may be required by law, or in connection with regulations or administrative proceedings and only then with reasonable advance notice of such disclosure to the other party. Notwithstanding the foregoing, Agent may make disclosure of confidential information at the direction of Buyer as may be necessary in performing its obligations hereunder in good faith and with due diligence provided that reasonable precautions are taken to protect the confidentiality of the information.

14. Warranty of Capacity to Enter into Agreement

Each party warrants to the other that it has full right, legal capacity and authority to enter into and perform this Agreement and that it will indemnify and hold harmless the other party for any breach of this warranty.

Agent further warrants represents to Buyer that Agent is serving as a buying agent pursuant to this Agreement and is not functioning as a principal; Agent further represents that the commissions are true buying commissions and that Agent shall not take any action inconsistent with this Agreement the effect of which would be to result in the



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Commissions being or becoming part of the dutiable cost of the goods purchased by Buyer with Agent's assistance as herein provided.

15. Modification of Agreement

This Agreement supersedes all previous agreements between Buyer and Agent. This Agreement may be amended, modified, superseded or cancelled, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by Buyer and Agent.

Warranties or conditions required by this agreement may be waived, only by a written instrument executed by Buyer and Agent or, in the case of waiver, by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any provisions hereof shall in no manner affect the right of that party at a later time to enforce such performance. No waiver by any party of the breach of any term, covenant, representation or warranty contained in this Agreement as a condition to such party's obligations hereunder shall release or affect any liability resulting from such breach, and no waiver of any nature, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such condition or breach or as a waiver of any other condition or of any other term, covenant, representation or warranty of this Agreement.

16. Buyer's Right to Indemnification

Agent agrees to indemnify and hold harmless the Buyer, its affiliates, and their respective officers, directors, employees, and customers from any and all losses or damage, including attorney's fees, if any, with respect to any suit, claim, demand or other processing arising from the failure of Agent to strictly comply with any of the terms of this agreement, including the Agent's negligent performance or failure to perform its obligations hereunder.

17. Termination of Agreement

This Agreement shall continue until terminated by either party on written notice to the other party, whereupon:

- (a) all rights and obligations of the parties hereto shall cease and terminate except as to rights and obligations accrued prior to the date of such termination, including rights and obligations under outstanding import contracts not yet performed.
- (b) Agent shall turn over to Buyer all originals and copies of contracts and other information in Agent's files relating to arrangements made by Agent with suppliers of merchandise to Buyer (it being understood that all such contracts and other information shall be treated by Agent as confidential and shall not be disclosed by Agent to any third party).



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18. Choice of Law

This Agreement has been executed in accordance with, and shall be governed by, the laws of the State of New York, United States of America.

19. Notice Requirements

Any notices or communications required hereunder shall be in writing and either delivered personally to Buyer or Agent, or mailed by Registered Mail (mailed notices shall be deemed given when duly mailed), as follows:

If to Agent, to:

ATTN: [_____]

If to Buyer, to:

ATTN: [_____]

and/or to such other address as hereafter shall be furnished pursuant to this section.

20. Entire Agreement

This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof. The parties make no representations to each other except as are expressly set forth herein. All paragraph headings are for reference only and do not constitute legally enforceable provisions of this agreement.

21. Assignment of Rights and Obligations

Neither party shall have any liability whatsoever to the other or be deemed to be in default of this Agreement as a result of any delay or failure in performing its obligations hereunder to the extent that any such delay or failure arises from causes beyond the control of that party including, but not limited to, acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riot, strikes, lock-outs, and industrial disputes.

Nothing in this Agreement shall create a partnership or joint venture between the parties hereto and, save as expressly provided in this Agreement, neither party shall enter



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into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto.

- a. Agent shall not assign its rights or delegate its duties under this Agreement unless otherwise agreed in writing.
- b. Notwithstanding Clause 21a, Agent shall have the right, in its sole and absolute discretion, to appoint any of the Agent's branches or wholly owned subsidiaries or associated companies to assist Agent in discharging its duties under this Agreement.

22. Dispute Resolution

Any and all disputes or claims arising hereunder shall be resolved by and in accordance with and governed by the laws of the State of New York, applicable to contracts made and to be wholly performed therein without regard to its conflicts of law rules. The parties hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or absent subject matter jurisdiction in that court, the state courts of the State of New York located in New York County for all actions, suits or proceedings arising in connection with this Agreement. All such proceedings are to be conducted in the English language.

For and on behalf of:

(Buyer)
By: _____

(Authorized Signature)

(Agent)
By: _____

(Authorized Signature)



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EXHIBIT A

MERCHANDISE



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EXHIBIT B

TERRITORY

