



RETAILER TERMS OF PURCHASE

These terms of purchase are agreed to as of the Effective Date set forth above between ZOMM, LLC (“ZOMM”), a Delaware limited liability company, and the Retailer identified above.

ALL SALES OF THE ZOMM WIRELESS CELL PHONE LEASH DEVICE AND ANY OTHER PRODUCTS THAT ZOMM MAY DEVELOP AND OFFER FOR SALE TO RETAILER (the “Products”) ARE MADE, AND EXPRESSLY CONDITIONED ON, RETAILER’S ASSENT TO THESE TERMS. ZOMM OBJECTS TO ANY DIFFERENT, CONFLICTING OR ADDITIONAL TERMS AND CONDITIONS, WHETHER MAJOR OR MINOR IN CHARACTER, CONTAINED IN A PURCHASE ORDER OR OTHER DOCUMENT ORIGINATING FROM RETAILER. RETAILER’S ACCEPTANCE OF THE PRODUCTS SHALL BE CONCLUSIVE EVIDENCE OF RETAILER’S ASSENT TO THESE TERMS.

1. General Terms

2. Orders, Price, and Payment Terms

2.1. Orders. Retailer shall order Products by delivery of a written purchase order by email or EDI to ZOMM, or by such other means as ZOMM may require from time to time. The minimum order size is one master carton consisting of 8 units. Orders are binding on ZOMM only upon its written acceptance of the order or upon shipment of the Products in accordance with the purchase order. ZOMM shall ship the Products to such locations as Retailer directs in its order. All shipments are F.O.B. Retailer’s designated location.

2.2. Cancellations. Retailer may not cancel all or any part of any order without ZOMM’s written consent, which it may withhold for any reason in its discretion.

2.3. Price. Retailer shall pay ZOMM its then current wholesale list price for Products. ZOMM may change the price for any Product at any time without prior notice to Retailer. Revised prices apply to all orders placed from that point forward.

2.4. Shipping and Taxes. Prices do not include shipping or delivery charges or any sales, use or other taxes unless otherwise stated specifically. ZOMM shall add applicable taxes to all invoice prices in those instances in which ZOMM is required to collect them from Retailer; provided, however, if ZOMM does not collect any such taxes and is later asked or required to pay such taxes by any taxing authority, Retailer shall pay such taxes to ZOMM or, if requested by ZOMM, directly to the taxing authority.

2.5. Payment Terms. An invoice will be issued to Retailer when each order is shipped. If Retailer fails to pay the invoice in full within 30 days from the date of the invoice, Retailer shall pay a service charge in an amount equal to the lesser of 1-1/2% per month or the highest legal rate on the unpaid balance. Retailer shall reimburse ZOMM for its reasonable attorney fees and other expenses incurred in attempting to collect any overdue account.

2.6. Credit. For purpose of procuring and maintaining credit, Retailer hereby authorizes ZOMM to verify and to obtain credit information and reports regarding Retailer at any time and in any manner ZOMM deems appropriate.

2.7. Delivery Dates. Any shipping or delivery date provided by ZOMM or its agents, either orally or in writing, is ZOMM’s best estimate. ZOMM does not guarantee shipment or delivery by a date certain, and ZOMM has no liability or obligation for loss or damage caused in whole or in part by any failure or delay to ship or to deliver any Products purchased by Retailer by a date certain, regardless of the cause of the delay or failure.

2.8. Title. Unless ZOMM otherwise agrees in writing and regardless of the manner of shipment and/or payment, title to any Products purchased by Retailer shall pass to Retailer upon delivery of the Products to Retailer.

2.9. Security Interest. Retailer hereby grants to ZOMM a security interest in all Products previously or hereafter purchased by Retailer from ZOMM to secure the payment to ZOMM of all indebtedness and obligations now or hereafter owing by Retailer to ZOMM. ZOMM is authorized to file any applicable financing statements to perfect the foregoing security interest.

3. Other Terms.

3.1. Retailer Obligations. Retailer shall:

(a) not advertise the Products for sale at a price less than the then current MAP price (currently \$79.99), in accordance with ZOMM’s MAP pricing policy as communicated to Retailer from time to time;

(b) not make any claims regarding the Products, other than claims approved in writing by ZOMM;

(c) not register any domain names that are similar or identical to any trademarks, trade names, “doing business as” names, legal names, or Product names of ZOMM;

(d) not repackage or otherwise alter the packaging of the Products, including combining or bundling the Products with other products;



(e) assign or transfer any Products purchased hereunder to any other party for purposes of resale or further distribution; and

(f) comply with all laws applicable to the sale and advertising of Products specifically and to the operating of Retailer's business generally.

3.2. Trademarks. Retailer acknowledges and agrees that "ZOMM" and "WIRELESS LEASH" and all related trademarks and related trade names are the exclusive property of ZOMM. Retailer agrees that it will not use, register, claim title to, or in any manner impair or interfere with the right of ZOMM in or to any such mark without ZOMM's prior written consent.

4. Term and Termination.

4.1. Term. This agreement governs any and all purchases of Products by Retailer. ZOMM or Retailer may terminate this agreement at any time upon written notice to the other party, and ZOMM will not accept any future orders from Retailer following any such termination. If Retailer has not placed an order for more than one year, then this agreement will automatically terminate.

5. Disclaimers and Indemnification

5.1. Disclaimer of Warranties. ZOMM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, OR THE PERFORMANCE OR RESULTS OF USE THEREOF. ZOMM HEREBY DISCLAIMS, AND MAKES NO, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

5.2. Disclaimer of Consequential Damages. ZOMM HAS NO LIABILITY WITH RESPECT TO THE PRODUCTS OR ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5.3. Limitation of Liability. ZOMM'S TOTAL LIABILITY TO RETAILER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, SHALL BE LIMITED TO THE AMOUNT RETAILER PAID ZOMM FOR THE PRODUCT UNITS GIVING RISE TO THE CLAIM, OR FOR ANY CLAIMS NOT RELATING TO SPECIFIC PRODUCT UNITS, TO ALL AMOUNTS PAID TO ZOMM BY RETAILER DURING THE

3 MONTHS IMMEDIATELY PRECEDING THE EVENTS FIRST GIVING RISE TO A CAUSE OF ACTION.

6. General

6.1. No Partnership. The parties are independent contractors. None of the terms set forth in this agreement create, or are to be construed as creating, any partnership, joint venture, agency, master-servant, employment, trust, or any other relationship between the parties. Neither party has the right or the power to serve as an agent of the other party, or to act in any other way on behalf of or in any way that might create a binding obligation on the other party.

6.2. Notices. Each party giving or making any notice, request, demand or other communication (each, a "Notice") pursuant to this agreement must give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this agreement is a writing: personal delivery, registered or certified U.S. Mail (in each case, return receipt requested and postage prepaid), or internationally recognized overnight courier (with all fees prepaid). Except as provided elsewhere in this agreement, a Notice is effective only if the party giving the Notice has complied with this paragraph.

6.3. Amendments. The parties can amend this agreement only by a written agreement of the parties that identifies itself as an amendment to this agreement. No additional or contrary terms on any invoice, purchase order, bill of lading, or other document are binding on either party absent an amendment that conforms to the preceding sentence.

6.4. Waivers. The parties can waive this agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

6.5. Severability. If any provision of this agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this agreement will remain in full force, if the essential terms and conditions of this agreement for each party remain valid, binding, and enforceable.

6.6. Entire agreement. This agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement cannot be



explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this agreement. There are no conditions precedent to the effectiveness of this agreement, other than those expressly stated in this agreement.

6.7. Counterparts. The parties may execute this agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this agreement in the presence of the other parties to this agreement. This agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this agreement, a party must produce or account only for the executed counterpart of the party to be charged.

6.8. Assignment and Delegation. Retailer shall not assign any of its rights under this agreement, except with the prior written consent of the other party. The preceding sentence applies to all assignments of rights, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of performance in violation of this Section is void.

6.9. Governing Law, Jurisdiction and Venue. The laws of the State of Oklahoma (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Except as set forth in Section 6.10 below, any claims or actions regarding or arising out of this agreement shall

be brought exclusively in a court of competent jurisdiction sitting in Tulsa, Oklahoma, and each party to this agreement submits to the nonexclusive jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this agreement brought in any state or federal court sitting in Delaware; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

6.10. Dispute Resolution. Any controversy or claim arising out of or relating to this agreement, or any breach thereof, must be settled by confidential binding arbitration in Tulsa, Oklahoma in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Either party may, without inconsistency with this agreement to arbitrate, seek from a court any provisional remedy that may be necessary to protect trademarks, copyrights, or other rights or property pending the establishment of the arbitral tribunal or its determination of the merits of the controversy. The parties agree that the arbitrator has the power to award all costs of the arbitration, including reasonable attorneys fees and expenses, to the prevailing party.

6.11. Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this agreement, the successful or prevailing party or parties are entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

The parties are signing this agreement using electronic signature on the date stated in the partner application.

ZOMM, LLC

RETAILER: _____