

## Drop Shipping Contract

This Drop Shipping Agreement (the "**Agreement**"), dated as of \_\_\_\_\_, 201\_, is entered into by and between EPREPPY, LLC, a Louisiana limited liability company having its principal place of business at 207 Grandville Drive, Lafayette, LA 70508 ("**Retailer**"), and \_\_\_\_\_, a \_\_\_\_\_ [corporation/limited liability company] having its principal place of business at \_\_\_\_\_, \_\_\_\_\_ ("**Vendor**", and together with Retailer, the "**Parties**", and each, a "**Party**").

### RECITALS

WHEREAS, Retailer is in the business of marketing and reselling Goods (as identified in Exhibit A attached hereto, which may change from time to time);

WHEREAS, Vendor is in the business of manufacturing/wholesaling/distributing/ selling the Goods;

WHEREAS, Retailer wishes to resell the Goods to Customers through a drop shipping arrangement, subject to the terms and conditions of this Agreement; and

WHEREAS, Vendor wishes to appoint Retailer as a non-exclusive Retailer under the terms and conditions of this Agreement.

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

- 1. Term:** Retailer and Vendor agree that the term of the Agreement shall commence on the above written effective date and shall continue for a period of 6 months, and for as long thereafter as it is mutually agreed between Retailer and Vendor. Either party may terminate this Agreement at any time by providing sixty days prior written notice to the other party. Provided, however, Vendor shall fulfill all orders prior to the effective date of termination.
- 2. Non-Exclusive Appointment.** Vendor hereby appoints Retailer to act as a non-exclusive seller of the Goods to Customers during the Term in accordance with the terms and conditions of this Agreement. Nothing contained herein shall restrict Retailer from having the right to obtain or retain the rights to sell or resell any other goods, including goods that may compete with the Goods. Further, this Agreement does not preclude either Party from entering into an agreement with any other party concerning the sale or distribution of other goods or products, including those that are similar to or competitive with the Goods.
- 3. Vendor's Role:** Vendor shall (a) make available for sale by Retailer the Goods identified in Exhibit A, (b) provide marketing materials related to the sale of the goods, including but not limited to professional quality photographs and descriptions of the Goods for posting on Retailer's website, (c) prompt order fulfillment, including processing of the order and shipping and handling of the Goods sold, (d) payment to Retailer of the commission earned for each Good sold pursuant to this Agreement, (e) order tracking and (f) sales reconciliation. Vendor retains the rights to all images of products provided. Retailer may not use images/photos for any purpose other than displaying/marketing for sales. Vendor shall also meet the performance obligations set forth in Section 6.
- 4. Price of Goods & Billing.**
  - a. Pricing.** Retailer shall sell the Goods to Retailer's customers at a rate that is solely within Retailer's discretion. However, Vendor shall provide Retailer with the price it offers the Goods to the market, including the MSRP and any sale prices offered by Vendor, plus shipping and handling. Vendor shall notify Retailer within three (3) business days prior to a good being offered for sale at a rate below Vendor's MSRP ("Sale Prices"), and shall inform Retailer of the Sale Price, the anticipated duration that the Sale Price will be offered, and Vendor's intent to re-stock or discontinue the Good at the conclusion of the sale. Vendor's MSRP for the Goods is set forth on Exhibit A, which is attached hereto and incorporated herein by reference ("**Prices**").
  - b. Retailer's Commission.** Retailer shall charge its customer at the point of sale, after which the order shall be communicated to Vendor for order fulfillment. Vendor shall charge Retailer the Prices

or Sale Prices, as applicable, less a commission equal to % of the sale price, plus a flat rate for shipping and handling of 6\$. All Prices include, and Vendor is solely responsible for, all costs and expenses relating to packing, crating, boxing, transporting, loading and unloading, customs, taxes, tariffs and duties, insurance and any other similar obligations relating to the manufacture, sale, procurement and delivery of the Goods. The parties acknowledge that the commission is at an introductory rate, established for the purpose of testing the concept between the parties, based on their existing business models. The parties agree to reevaluate and negotiate an increase in the rate identified above, or terminate this Agreement, should Retailer determine it is not sustainable.

**c. Billing.** Retailer shall provide its credit card information to Vendor, which Vendor will keep securely on-file and Vendor is authorized to charge for the limited purposes set forth herein. At the end of each business day in which an order is received for fulfillment, the Retailer's credit card will be charged for the orders placed that day. Items will not be shipped until the credit card payment has cleared the Vendor's merchant account (usually a 24-hour turnaround time). Items will be shipped to the Retailer's customer no later than 3 business days after an order has been received. A credit shall be applied to Retailer's credit card for all Goods returned for a refund pursuant to this Agreement.

**5. Retailer Performance Obligations.** Retailer shall:

- a. Market, advertise, promote and resell the Goods to Customers consistent with good business practice;
- b. Maintain a place or places of business as required for Retailer to perform its duties under this Agreement;
- c. Not make any false or misleading representations or warranties to any Customer regarding Vendor or the Goods;
- d. Not engage in any unfair, misleading or deceptive practices regarding Vendor, Vendor's Trademarks or the Goods; and
- e. Be responsible for the collection, reporting and remittance of all sales taxes to the correct tax authority for all business transactions, sales or revenue to Retailer's customers stemming from the sales of the Vendor's products to the extent required by applicable law. Vendor is not obligated to determine whether a sales tax applies to any such transaction and is not responsible to collect, report or remit any tax information arising from any such transaction.

**6. Vendor Performance Obligations.** During the Term Vendor shall, at no cost to Retailer:

- a. Without limiting Retailer's rights under this Agreement, provide any necessary information, material and product support (including consulting with Retailer regarding inventory levels, advising on effective promotional efforts, resolve Customer disputes with implementation of suitable escalation procedures, and answer questions concerning the Goods);
- b. Provide Retailer such available marketing, advertising, promotional, sales and technical literature, samples of Goods that are not intended for resale as Retailer may reasonably consider necessary to assist with the promotion of the Goods and shall notify Retailer promptly in the event of any material changes in such information;
- c. Subject all Goods to commercially reasonable quality control standards and all Goods sold or delivered under this Agreement shall be subject to the warranties set forth in this Agreement; and
- d. As reasonably requested by Retailer, provide support contact information.

**7. Terms of the Sale.** Vendor shall make available, sell and fulfill orders for the purchase of Goods to Retailer's customers at the Prices and on the terms and conditions set out in this Agreement. Retailer is not required to purchase any Goods and makes no representations concerning the volume that may be purchased by its customers.

**8. Availability/Changes in Goods.** Vendor shall:

- a. Provide Retailer with 15 days' Notice before discontinuing or not re-stocking a Good; and

- b. Within 15 days of Vendor introducing any new good, new version of a Good or replacement of a Good, notify and provide Retailer with photographs and other marketing materials reasonably necessary for Retailer to add the new/replacement Goods to its online offerings.

**9. Allocation.** Vendor shall maintain sufficient Goods inventory to permit it to fill orders by Retailer's customers. In the event of any shortage of Goods in Vendor's inventory, Vendor shall notify Retailer so that Retailer may account for this and update its product offerings on its website to reflect: (a) the quantity limitations, (b) possible delays in delivery, or (c) discontinuation of a Good. Vendor shall also notify Retailer immediately if Vendor cannot timely fulfill an Order. If there are any delays in delivery or inability to fulfill an order in whole or in part, Retailer and/or its customer has the right, in its sole discretion and without liability or penalty, to receive a refund of the portion of the canceled order, for which Vendor shall bear the expense of any applicable return shipment, without recharge or decrease in the credit owed to Retailer.

**10. Order Origination, Confirmation and Rejection.** Retailer, either directly or through an automated ecommerce program, shall cause Vendor to be notified of an order for the purchase of Goods by its customers. Vendor shall confirm to Retailer its acceptance of the order issued hereunder (each, a "**Confirmation**") within 24 hours following Vendor's receipt thereof by e-mail. Each Confirmation shall reference the order number, confirm acceptance thereof or, solely if permitted under this section, advise Retailer of Vendor's rejection of such order, the date of acceptance or rejection and the basis for rejection, if applicable. If Vendor fails to issue a Confirmation within the time set forth in the first sentence of this section, or otherwise commences performance under such order, Vendor will be deemed to have accepted the order, for which Retailer shall be entitled to its commission. Vendor may only reject a Purchase Order if Vendor has sent Retailer a notice of rejection of the order.

**11. Amendments to Orders.** Retailer, upon notice from Retailer's customer, may, on Notice to Vendor, request changes to an order. On or before one business day after receiving the request, Vendor shall provide Confirmation thereof pursuant to Section 10.

**13. Retailer's Right to Cancel Orders.** Retailer may, in its sole discretion, without liability or penalty, cancel any order with or without cause at any time prior to Vendor's completing fulfillment of an order. If any order is cancelled, Vendor shall immediately cease work and purchasing materials relating to fulfilling the order. In the event of such termination, the fees charged to Retailer's credit card shall be promptly refunded within 48 hours of such cancellation.

**14. Shipment and Delivery Requirements.** Vendor shall assemble, pack, mark and ship Goods, strictly in the quantities ordered, to the Retailer's Customer's designated delivery location set forth in the order within 3 business days of the date of Vendor's receipt of the order. Packaging shall include a packing slip containing the order number, the quantity of each Good in the shipment, the number of packages in shipment and return label. Each package sent to the Customer will reflect a sale is from Retailer, not Vendor; provided, however, Vendor's brand name may appear on all product listings encompassed by this Agreement, and, upon the agreement of the parties, shall remain visible on product images provided by the Vendor.

**15. Acceptance of Goods.** If Retailer's customer determines, in its sole discretion, that Goods delivered under this Agreement are Nonconforming Goods, then Retailer's customer may, at its option:

- a. If such Goods are Nonconforming Goods, either:
  - i. reject the Nonconforming Goods for a full refund, including shipping and handling; or
  - ii. require prompt replacement, at no additional cost to Retailer or Retailer's customer;
- b. Retain such Goods.

If Retailer's customer exercises the right to receive a refund, then Vendor shall, after receiving the returned Nonconforming Goods, notify Retailer of Vendor's receipt thereof and apply a credit to Retailer's credit card for the full amount charged applicable to the returned Good(s), plus shipping and handling, which Retailer shall then refund to Retailer's customer. If Retailer's customer exercises the right for Nonconforming Goods to be replaced, then Vendor shall, after receiving the returned Nonconforming Goods, provide a confirmation notice pursuant to Section 10 concerning the replacement order and ship

to Retailer's customer, at Vendor's expense, the replaced Goods in a timely manner. For purposes of this Agreement, the term "Nonconforming Goods" means any good from Vendor that: (a) is not the Good ordered; (b) does not conform to the make/model number/UPC/SKU/PRODUCT IDENTIFIER/size/color listed in the applicable order; or (c) on visual inspection, Retailer's customer reasonably determines are otherwise defective.

**16. Risk of Loss.** Risk of loss to Goods shipped under any order does not pass to Retailer's customer until receipt by Retailer's customer at the delivery location identified by Retailer's customer in the order. Vendor will bear all risk of loss or damage to Goods until Retailer's customer's receipt and acceptance of such Goods in accordance with the terms hereof. Retailer shall be entitled to its commission regardless of any loss or damage occurring in transit or other return of Goods by Retailer's customer to Vendor.

**17. Product Warranties.** Vendor warrants to Retailer that (a) for a period of 90 days from the date of initial delivery of the Goods (the "**Warranty Period**"), such Good will be free from defects in material and workmanship; (b) Goods are new and free of defects in design; (c) no claim, lien or action exists or is threatened against Vendor that would interfere with the marketing, use or sale of the Goods; and (e) no Goods, nor the manufacture, marketing, sale and use of the Goods, or anything in or contemplated by this Agreement, infringes on any third-party Intellectual Property Rights.

**18. Remedies for Breach of Warranties.** During the Warranty Period, if Goods do not comply with the warranties in this Agreement, in addition to other remedies available at law in equity, Vendor shall, at Retailer's or Retailer's customer's discretion: (a) replace such Defective Goods, or (b) render a refund for such Defective Goods plus any shipping and handling charges paid. Retailer's customer shall ship, at Vendor's expense and risk of loss, such Defective Goods to Vendor and Vendor will, at Vendor's expense and risk of loss, provide a replacement Good to Retailer's customer's delivery location identified in the order in a timely manner.

**19. Right of Return.** In addition to and without limiting its rights under the directly preceding section, Retailer's customer may return for a credit or refund, Goods purchased under this Agreement for any or no reason; provided that:

- a. Retailer's customer returns the Goods unused, unworn, undamaged, and with their original tags (if applicable) within 30 days of receipt; and
- b. Returns are made at Retailer's customer's expense and risk of loss.

For each returned Good under this Section, Vendor shall, after receiving the returned Good(s), notify Retailer of Vendor's receipt thereof and apply a credit to Retailer's credit card for the full amount charged applicable to the returned Good(s), less shipping and handling,

**20. Most Favored Reseller.** Vendor represents and warrants that Retailer shall receive the greater benefit of either of the following :

- a. The Prices set forth on Exhibit A are at least as low as the price charged by Vendor to other buyers for the same Goods or similar Goods. If, at any time during the Term, Vendor charges any other buyer a lower price for the same Goods or similar Goods, Vendor shall notify Retailer and apply that price to all same or similar Goods under this Agreement, and shall make a payment to Retailer in the form of a commission, which shall be paid to Retailer by applying refund/credit to Retailer's credit card within thirty (30) days of demand from Retailer. The Parties shall reflect any adjustment to pricing under this Section in an amendment to Exhibit A.
- b. If, at any time during the Term, Vendor offers a commission to any other retailer or distributor in an amount higher than the commission set forth in Section 4.b., Retailer shall be entitled to a commission at the highest commission percentage paid or payable by Vendor retroactive to the date such commission percentage became effective, which shall be paid to Retailer by applying refund/credit to Retailer's credit card within thirty (30) days of demand from Retailer. The Parties shall reflect any adjustment to the commission in an amendment to Section 4.b.

**21. Use of Vendor's Name and Trademarks.** Retailer and its representatives and affiliates are hereby authorized to:

- a. Use Trademarks of Vendor and images/photographs of the Goods, including those owned by any third party, in connection with advertising, promoting and sale of the Goods; and
- b. Refer to and advertise itself as an authorized Retailer of the Goods.

For purposes of this Agreement, the term "Trademarks" means all rights in and to US and foreign trademarks, service marks, trade names, brand names, logos, and other similar designations of source, whether registered or unregistered, including licenses granted to Vendor with respect to any of the Goods and any images/photos provided by Vendor to Retailer for advertising of any of the Goods.

**22. Right to Terminate the Agreement.** Either party may terminate this Agreement, on Notice to the other party:

- a. If the other party repudiates any of its obligations under this Agreement;
- b. If the other party is in breach of any representation, warranty or covenant under this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured within a commercially reasonable period of time under the circumstances, in no case exceeding fifteen (15) days following receipt of Notice of such breach;
- c. If Vendor fails to, or threatens to fail to, timely deliver Goods conforming to the requirements of, and otherwise in accordance with, this Agreement;
- d. If the other party:
  - i. Becomes insolvent or is generally unable to pay, or fails 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. Seeks reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts;
  - iv. Makes or seeks to make a general assignment for the benefit of its creditors; or
  - v. Applies for or has 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;

**23. Effect of Expiration or Termination.** Upon the expiration or earlier termination of this Agreement Vendor shall promptly complete all pending orders.

**24. Vendor Reports.** At Retailer's request, but no more than monthly for months in which the sale of Goods occurred, Vendor shall provide Retailer with a current statement of account, listing all orders received, payments processed and credits given since the date of the previous statement, and such other information as Retailer may reasonably request.

**25. Protection against Supply Interruptions.** Vendor shall, at Vendor's sole cost and expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Goods during any foreseeable or anticipated event or circumstance that could interrupt or delay Vendor's performance under this Agreement.

**26. Duty to Advise.** Vendor shall promptly notify Retailer of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences:

- a. any failure by Vendor to perform any of its obligations under this Agreement;
- b. any delay in delivery of Goods;
- c. any defects or quality problems relating to Goods;
- d. any change in Control of Vendor;

- e. any change in Vendor's authorized Representatives, insurance coverage or professional certifications; or
- f. any failure by Vendor, or its subcontractors or common carriers, to comply with Law.

**27. Indemnification.** Vendor shall indemnify, defend and hold harmless Retailer and its representatives, officers, directors, employees, and agents, (collectively, "**Retailer Indemnitees**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, fees and costs of enforcing any right to indemnification under this Agreement incurred by a Retailer Indemnitee or a customer of Retailer (collectively, "**Losses**"), relating to/arising out or resulting from:

- a. breach or non-fulfillment of any representation, warranty or covenant under/representation or warranty set forth in this Agreement by Vendor;
- b. any negligent act or omission of Vendor in connection with the performance of its obligations under this Agreement; or
- c. any failure by Vendor to comply with any applicable Laws.

**28. Vendor Intellectual Property Indemnification.** Vendor shall defend, hold harmless and indemnify, Retailer Indemnitees from and against all third-party claim alleging infringement of any intellectual property right or Trademark involving any Good used by Vendor. In addition, if such a claim is or is likely to be made, Vendor shall, at its own expense, exercise the first of the following that is practicable, at Retailer's request, accept the cancellation and return (at Vendor's expense) of infringing Goods without Retailer or Retailer's customer's having any cancellation liability and refund to Retailer's customer any amount paid for such infringing Goods. If the Goods, or any part of the Goods, become, or in Vendor's opinion are likely to become, subject to a Claim that qualifies for intellectual property indemnification coverage under this Section 28, Vendor shall, at its sole option and expense, notify Retailer and Retailer's Customer to cease using such Goods. Retailer shall notify Vendor of third-party Claims against Retailer and reasonably cooperate in the investigation, settlement and defense of such Claims at Vendor's expense.

**29. Limitation on Liability.** NEITHER PARTY IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY THE OTHER PARTY OR COULD HAVE BEEN REASONABLY FORESEEN BY THE OTHER PARTY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**30. Miscellaneous Provisions.**

- a. **Independent Contractors.** The Parties are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, employment, partnership, or agency relationship between Vendor and Retailer. Neither Party, by virtue of this Agreement, will have any right, power or authority to act or create an obligation, express or implied, on behalf of the other Party.
- b. **Notices.** All notices under this Agreement 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). 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) or by e-mail (with confirmation of transmission)

Notice to Retailer:

Address:

Email

Notice to Vendor

Address:

Email:

- c. **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- d. **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.
- e. **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.
- f. **Amendment and Modification.** No amendment to or modification of this Agreement or any Purchase Order is effective unless it is in writing and signed by an authorized Representative of each Party. Any additional, contrary or different terms contained in any Vendor Confirmation, invoices or other communications, and any other attempt to modify, supersede, supplement or otherwise alter this Agreement, are deemed rejected by Retailer and will not modify this Agreement or be binding on the Parties unless such terms have been fully approved in a signed writing by authorized Representatives of both Parties.
- g. **Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, attachments and appendices, together with the Purchase Orders, constitutes the sole and entire agreement of the Parties with respect to 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
- h. **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. A signed copy of this Agreement is deemed to have the same legal effect as delivery of an original.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

[VENDOR NAME]

EPREPPY, LLC

By \_\_\_\_\_

By \_\_\_\_\_

Name:

Name:

Title:

Title:

