

## ZEBRAPALS, INC. TERMS AND CONDITIONS

These Zebrapals, Inc. Terms and Conditions apply to all services supplied by and between Zebrapals, Inc., a California corporation (“Zebrapals”), on the one hand, to the “Customer”), on the other hand.

**THIS AGREEMENT CONTAINS THE TERMS AND CONDITIONS THAT GOVERN THE CUSTOMER’S USE OF THE ZEBRAPALS SERVICES AND ITS RELATIONSHIP WITH ZEBRAPALS. WHEN THE CUSTOMER ASKS ZEBRAPALS TO SUPPLY ANY SERVICE TO IT, THE CUSTOMER AND ANY BUSINESS THE CUSTOMER REPRESENTS AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS.**

### 1. Definitions and Interpretation

1.1 In this document:

- (a) **Abandoned goods** means any items remaining in possession of Zebrapals, Inc. that have unpaid invoices older than 30 days.
- (b) **Agreement** means the Zebrapals, Inc. Terms and Conditions and any and all exhibits and schedules referred to herein.
- (c) **Amazon** means Amazon.com, Inc.
- (d) **Amazon Fulfillment Centers** means the fulfillment centers operated by Amazon in the United States of America.
- (e) **Business Day** means any day other than a Saturday or Sunday or a federal or state government holiday observed in the State of California.
- (f) **Confidential Information** means information which is or has been directly or indirectly disclosed by one party (“Discloser”) to the other party (“Recipient”) in connection with this Agreement pertaining to any one or more of the following, as applicable:
  - (i) matters pertaining to Intellectual Property; and
  - (ii) information concerning any Products that are not in the public domain and for which disclosure is not required in accordance herewith or under Applicable Requirements (as set out in clause 3.1) or other applicable law.But, in the case of clause (i) and (ii), does not include any information which is:
  - (iii) in the public domain;
  - (iv) information that was independently and lawfully acquired or developed by the Recipient, without any breach of any obligation owed by the Discloser to any third party; or
  - (v) required by law to be disclosed by the Recipient; provided, however, that the Recipient shall give timely notice to the Discloser in order that the Discloser may take such efforts as Discloser may deem reasonably appropriate to protect its interests.
- (g) **Customer** means the party to which or for whom Zebrapals provides Services in accordance with this Agreement.
- (h) **Force Majeure Event** means any event arising which is beyond the reasonable control of the affected party, including acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of a party to this Agreement or any other party), failure of a utility service or transporter telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, pandemic or default of one or more of Zebrapals’ suppliers or sub-contractors.
- (i) **Intellectual Property** means all intellectual property rights wherever in the world arising,

whether registered or unregistered (and including any application), including copyright, know-how, Confidential Information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, vendor lists, customer lists, fulfillment processes, specifications, design rights, software and processes and database rights.

(j) **Products** means Customer's products which are imported into the United States of America and shipped to Zebrapals for repackaging, relabeling, and redistribution to Amazon

(k) **Services** means any services supplied by Zebrapals to Customer, including, without limitation, the services associated with receiving Customer's Products from any person (including freight forwarders and customs agents), relabeling Products with Customer's labels, preparing Customer's packaging, storage services and arranging for Products to be redelivered to Amazon Fulfillment Centers, but does not include Third Party Services.

(l) **Third Party Services** means services which are arranged by Customer, or on behalf of Customer, including, without limitation, importation and customs clearance, inbound and outbound freight, distribution to consumers, advice on compliance, packaging and labelling, product sourcing, product testing and/or any and all other services not expressly stated in a Work Order signed by Zebrapals.

(m) **Work Order** means a request for services setting out work to be completed by Zebrapals, which is prepared by Zebrapals and agreed to in writing (whether by email, fax or otherwise) by Customer.

(n) **Zebrapals** means Zebrapals, Inc., a California corporation.

## 2. Services; Payment Terms

2.1 Zebrapals will supply Customer with only those Services that are specified in the applicable Work Order for Customer as requested by the Customer in writing in a Work Order.

2.2 Except as may otherwise be specified in a Work Order, Services are limited to services for Products that are shipped by, or on behalf of, Customer to Zebrapals' facility located in California and from such facility to one or more Amazon Fulfillment Centers located in the United States of America.

2.3 Customer agrees to pay:

(a) Zebrapals' then current service and storage fees;

(b) all costs incurred to ship Customer's Products to and from Zebrapals' facility, any third party provider, and the relevant Amazon Fulfillment Centers, including, but not limited to, all associated duties, levies, taxes, costs of freight and transit insurance, if any;

(c) any customs or excise duties or taxes or other charges which are charged to Zebrapals in connection with the Products and the Services rendered hereunder;

(d) any other charges made by Zebrapals for Services as reflected in the applicable Work Order or as may be approved in writing between Zebrapals and Customer;

(e) such additional amounts as are set forth in Section 2.4 hereof; and

(f) any other third-party charges for costs incurred by Zebrapals in rendering Services under this Agreement.

2.4 The price due for Services and other charge, as provided for in Section 2.3 hereof, shall be due in full upon receipt of invoice. In the event that an amount due to Zebrapals is not paid when due, then the late amount shall bear interest at the rate of ten percent (10.0%) per annum, retroactive to the corresponding invoice date; provided, however, that in no event shall interest charged exceed the maximum amount permitted under applicable law. A service charge of \$35 will be charged to Customer for each returned check.

## 3. Obligations of Customer

3.1 Customer hereby ensures, at its own cost, and represents and warrants, that all Products are:

(a) imported into the United States with proper and complete documentation with Customer listed as the importer/consignee;

(b) compliant with United States federal and state laws in all respects, including providing test reports from internationally accredited testing laboratories, where necessary, to ensure compliance with FDA and FTC requirements, as may be applicable, as well as any and all other applicable state, federal, and/or local laws and regulations governing the import, export, sale and distribution of the Products (collectively, "Applicable Requirements");

(c) free from any illegal substances; and

(d) described on all packaging in accordance with all Applicable Requirements.

(e) with respect to any inbound and/or outbound freight charges, that these charges have in fact been prepaid and that further, the Customer will prepay any and all customs, clearance fees, duty/taxes assessed and/or brokerage charges, and that should Zebrapals be billed for any of these charges that heretofore have not been paid, Customer agrees to reimburse Zebrapals immediately upon receipt of Zebrapals invoice.

3.2 Customer represents and warrants that:

(a) it has the full right, power, and authority to enter into this Agreement;

(b) it has no agreements, relationships, or commitments to any other person or entity that prevent Customer from complying with its obligations to Zebrapals hereunder;

(c) Customer will comply with all Applicable Requirements and all other applicable state, federal, and/or local laws and regulations, except for instances where the failure to comply would not have a material adverse effect on Zebrapals; and

3.3 Customer shall ensure that all of the Products, as well as the labels, tags, instructions and packaging that are used in connection with the Products, comply in all respects with the Applicable Requirements as well as any other applicable state, federal and/or local laws and regulations, except for instances where the failure to comply would not have a material adverse effect on Zebrapals.

3.4 For the avoidance of doubt, Zebrapals reserves the right to test Products without notice to Customer and may inform enforcement authorities and disclose information concerning Customer and/or the Products in instances where it reasonably believes that (i) Customer has not complied with Applicable Requirements or (ii) Zebrapals is required to take any such action or actions.

#### **4. Returns**

4.1 If Products are mislabeled, undeliverable or cannot be distributed within the United States of America for any reason, Zebrapals may, at Customer's expense, return all or some portion of the Products to Customer. Notwithstanding, Customer shall be responsible for all charges for Services rendered by Zebrapals with respect to any returned Products. If any Products are not returned to Customer, said Products shall be deemed, "abandoned" as defined hereinabove.

#### **5. Intellectual Property**

5.1 Subject to the provisions of this clause, nothing in this Agreement shall operate to transfer or assign any Intellectual Property rights of any kind (including copyright, designs, trademarks, patents or other rights) from one party to the other.

5.2 Customer grants to Zebrapals a non-assignable, non-exclusive limited licence to use Customer's Intellectual Property, as may be reasonably necessary solely for the purposes of carrying out the Services.

5.3 This Section 5 shall survive the termination of this Agreement.

## **6. Confidentiality**

6.1 Each party will keep confidential, treat as privileged, and not directly or indirectly make any disclosure to any third party, or use without the consent of the other party, any Confidential Information directly or indirectly obtained from the other during the course of this Agreement, except to the extent necessary to carry out the Services.

6.2 This Section 6 shall survive the termination of this Agreement.

## **7. Limitation of Liability; Indemnification**

7.1 LIMITATION OF LIABILITY. CUSTOMER'S AND ZEBRAPALS' LIABILITY SHALL BE LIMITED TO ACTUAL DAMAGES CLAIMED BY THE PREVAILING PARTY AND, IN NO EVENT SHALL THE NONPREVAILING PARTY BE RESPONSIBLE FOR ANY LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTIONS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE NONPREVAILING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT NOTHING HEREIN SHALL LIMIT CUSTOMER'S INDEMNIFICATION OBLIGATIONS TO ZEBRAPALS UNDER SECTION 7.4 HEREOF. IN NO EVENT SHALL ZEBRAPALS LIABILITY TO CUSTOMER EXCEED THE AMOUNT OF ITS CHARGES TO CUSTOMER FOR SERVICES HEREUNDER. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 7.1 IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE, THE ECONOMIC TERMS OF THE AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

7.2 Zebrapals will not under any circumstances be liable to Customer for any Third Party Services or for any loss or damage to Customer caused by a provider of Third Party Services, even if Zebrapals has arranged or facilitated those services on behalf of Customer. Customer agrees that it will be bound by the terms and conditions of the Third Party Service provider, as well as the terms of this Agreement.

7.3 For the avoidance of doubt nothing in this Section 7 shall be deemed to limit Customer's liability to the Zebrapals for amounts due based on Services rendered, charges incurred and other amounts due consistent with Section 2 hereof.

7.4 Customer shall indemnify, defend, and hold harmless Zebrapals, its affiliates, successors, assigns, directors, officers, employees and attorneys of the foregoing from and against and in respect of any and all third-party claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, taxes, penalties and reasonable attorneys' fees, that Zebrapals shall incur or suffer, that directly or indirectly arise, result from, or relate to (i)

the breach of, or failure by Customer, or anyone acting on its behalf, to perform, any of Customer's representations, warranties, covenants, or agreements in this Agreement or in any schedule, certificate, exhibit, Work Order, or other instrument furnished or to be furnished by the parties under this Agreement, (ii) any negligent, reckless or intentionally wrongful act of Customer or anyone acting on its behalf, (iii) the performance of any of any and all Third-Party Services, (iv) any acts or omissions by Customer or its officers, directors, managers, employees, agents or representatives or (v) any costs or expenses arising from the Products, product compliance, product recalls, sales or marketing representations, investigations/audits by government regulatory agencies, Customer's sub-contractors or representatives, and/or third party claims (including but not limited to claims or actions by Amazon or its customers). Zebapals shall promptly notify the Customer of the existence of any claim, demand, or other matter to which Customer's indemnification obligations would apply, and shall give the Customer a reasonable opportunity to defend the same at the Customer's own expense and with counsel of its own selection; provided that Zebapals shall at all times also have the right to fully participate in the defense at Zebapals' own expense. If the Customer shall, within a reasonable time after this notice, fail to take prompt steps to defend, Zebapals shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter on behalf, for the account, and at the risk, of the Customer. If the claim is one that cannot by its nature be defended solely by the Customer (including, without limitation, any federal or state tax proceeding), then Zebapals shall make available all information and assistance that the Customer may reasonably request, at the Customer's expense.

7.5 This Section 7 shall survive the termination of this Agreement.

## **8. Liens**

8.1 Security Interest. Customer hereby grants Zebapals a security interest in the Products, including the Products in the condition delivered to Zebapals and in their condition based on the rendering of Services hereunder, as well as any proceeds of such Products (together known as the "Collateral"), such security interest being deemed made and affirmed at the time that Customer acquires an interest in the Collateral. The Collateral may be sold by Customer in the normal course of its business so long as Customer is not in material breach of the terms of the Agreement. Zebapals shall be deemed to have all of the rights of a secured party as provided under the Uniform Commercial Code as in effect in the State of California, as well as other applicable law. Zebapals, in its sole discretion, may file a UCC-1 Financing Statement (the "Financing Statement") with the California Secretary of State or other applicable government agency.

8.2 Warehouseman's Lien. Customer hereby grants Zebapals a warehouseman's lien in the Collateral, consistent with Section 7-209 of the California Commercial Code, in order to provide for payment of any charges for storage of the Products, as well as transportation, insurance and such other matters permitted under Section 7-209. This section specifically applies to Collateral which has been deemed "abandoned", as defined hereinabove, requiring the disposal of such Collateral, as a result of breach of Section 10, hereinbelow.

## **9. Force Majeure**

9.1 If Zebapals delivery or performance is delayed by a Force Majeure Event, then Customer

shall have the right to terminate or extend any Work Order, in whole or in part, by providing written notice to Zebapals. In such case, Zebapals shall not have any liability associated therewith. If Customer's requirements are impacted by a Force Majeure Event, which is beyond reasonable control of Customer and which could not have reasonably been foreseen by Customer, then Customer may terminate or reschedule any Work Order or terminate this Agreement without any extra compensation to Zebapals, except that Customer shall pay for all Services rendered through the time of termination, as well as all charges incurred and other amounts due in accordance with Section 2 hereof.

## **10. Termination**

10.1 The term of this Agreement shall commence on the acceptance by Zebapals of a Work Order supplied by the Customer unless earlier terminated in accordance with Section 10.2 or 10.3, as the case may be; Term shall automatically extend for such period of time as reasonably necessary for the discharge of Services pursuant to any Work Order outstanding as of the expiration of the Term.

10.2 Notwithstanding Section 10.1, this Agreement may be terminated by Zebapals prior to expiration of the Term in the event that Customer fails to pay any amount due hereunder within ten (10) Business Days of the date due hereunder and such failure to pay within such 10-Business Day period is not cured within five (5) Business Days of Customer's receipt of notice of such failure to make timely payment.

10.3 Notwithstanding Section 10.1, this Agreement may be terminated by (i) Zebapals on prior written notice to Customer in the event that (A) Zebapals determines that Customer is in breach of one or more of its obligations hereunder (other than payment obligations owed to Zebapals), which obligations are not cured with ten (10) Business Days of Customer's receipt of written notice from Zebapals setting forth the breach and what must reasonably be done to cure the breach or (B) Customer is in breach of one or more of its representations or warranties hereunder or (ii) Customer on prior written notice to Zebapals in the event that Customer determines that Zebapals is in breach of one or more of its obligations hereunder, which obligations are not cured with ten (10) Business Days of Zebapals' receipt of written notice from Customer setting forth the breach and what must reasonably be done to cure the breach.

10.4 Post-Termination Matters. In the event of any termination hereunder,

(a) all Services, including licences, if any, granted under this Agreement, shall immediately terminate;

(b) each party shall return and make no further use of any Intellectual Property, documentation and other items (and all copies of them) belonging to the other party;

(c) the accrued rights of the parties as at termination, and the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced;

(d) Zebapals will notify Customer in writing that Customer must remove all of its Products from Zebapals' facility within fifteen (15) Business Days, at the Customer's sole expense. If Customer does not remove all of the Products then those Products shall be deemed "abandoned" and

Zebrapals shall be entitled to dispose of the Products without being liable to the Customer in any way, and charge the cost for the disposal of the Products to Customer;

(e) the amounts due under this Agreement, any Work Order(s) or Invoices will remain due and payable in accordance with the terms of this Agreement based on services rendered and purchases made through the date of termination. Accordingly, post-termination payments based on those services shall be due in accordance with Agreement.

## **11. Dispute Resolution**

11.1 Except where a party seeks urgent interlocutory relief, if any difference or dispute shall arise between the parties in connection with this Agreement or its construction or interpretation, a party must follow the alternative dispute resolution procedures detailed below:

(a) a party claiming that a difference or dispute has arisen ("the Dispute") under or in relation to the Agreement must give written notice to the other party specifying the nature of the Dispute.

(b) on receipt of that notice by the other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation and determination or similar techniques agreed by them

(c) Failing resolution of the Dispute within fifteen (15) Business Days of the date of notice, the Dispute may be resolved by arbitration as set out in Section 12.

## **12. GOVERNING LAW AND ARBITRATION OF DISPUTES**

12.1 Subject to Section 11 hereof, any controversy or claim arising out of or relating to this Agreement, or the making, performance, breach or interpretation thereof, shall be settled by binding arbitration in Los Angeles County, California in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then existing. Any claim concerning whether a particular matter or issue is subject to arbitration in accordance herewith shall also be so determined by arbitration. The arbitration shall be held before a single arbitrator. Any award by the AAA shall be final and binding between the parties; and judgment on the arbitration award may be entered in any court having jurisdiction over the subject matter of the controversy. All parties may pursue discovery in accordance with California Code of Civil Procedure Section 1283.05, the provisions of which are incorporated herein by reference, with the following exceptions: (i) the parties hereto may conduct all discovery, including depositions for discovery purposes, without leave of the arbitrator; and (ii) all discovery shall be completed no later than the commencement of the arbitration hearing or one hundred twenty (120) calendar days after the date that a proper demand for arbitration is served, whichever occurs earlier, unless upon a showing of good cause, the arbitrator extends or shortens that period. Any disputes relating to such discovery will be resolved by the arbitrator. The parties agree that in rendering an award, the arbitrator shall have no jurisdiction to consider evidence with respect to, or render any award or judgment for, punitive or exemplary damages or any other amount awarded for the purposes of imposing a penalty. The parties specifically waive any claims for punitive or exemplary damages or any other amount awarded for the purposes of imposing a penalty that arise out of or are related to this Agreement or the breach thereof, or the conduct of the parties in connection with this Agreement. The arbitrator shall have the power to award

reasonable attorneys' fees and costs consistent with this Agreement. Either party may submit the controversy or claim to arbitration.

### **13. MISCELLANEOUS**

**13.1 Independent Contractors:** The relationship of the parties under this Agreement is that of independent contractors. Nothing in this Agreement shall be deemed to create an employer-employee relationship.

**13.2 Notice.** Any notice *required* or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, or (c) sent by rapid air courier, or (d) sent by electronic mail or facsimile to the other party's email address or facsimile number as supplied by one party to the other from time to time, in each case properly posted and fully prepaid to the appropriate address last supplied by the other party, or in the case of electronic mail, the address supplied by the other party. Either party may change its address for notice by notice to the other party given in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, ten (10) Business Days after deposit in the mail as set forth above, or five (5) Business Days after delivery to an international air courier service. A notice sent by electronic mail shall be deemed to have been received at the time of delivery into the recipient's electronic mail system (as shown by a timed delivery receipt received by the sender and printed out on the day of receipt).

**13.3 Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

**13.4 Variation.** The terms of this Agreement may be altered, modified and/or varied ("Varied Terms") by ZebraPals from time to time by providing prior written notice to Customer. The Varied Terms will apply to all future Work Orders from the date the Varied Terms come into effect as outlined by the written notice mentioned above.

**13.5 Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the provision shall be modified with such amendments that will preserve, as far as possible, the commercial intentions expressed in this Agreement.

**13.6 Integration.** This Agreement (including the Exhibits, Work Orders, Invoices, and/or Schedules hereto) contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the parties with respect to said subject matter. No terms, provisions or conditions of any purchase order, acknowledgement or other business form that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this



Agreement, regardless of any failure of a receiving party to object to such terms, provisions or conditions. This Agreement may not be amended, except by a writing signed by both parties.

13.7 Counterparts. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.

13.8 Headings. The use of headings, captions and numbers in this Agreement is solely for the convenience of identifying and indexing the various paragraphs and shall in no event be considered otherwise in construing or interpreting any provision in this Agreement.