



VINYA CONSIGNMENT AGREEMENT

This agreement is made by and between _____ (“Seller”) and VINYA LLC, a Texas Limited Liability Company (“VINYA”).

WHEREAS Seller wishes to sell those items described in the VINYA Consignment Agreement attached hereto (the “Consigned Items”) by consigning said Consigned Items to VINYA for sale on an exclusive basis; and

WHEREAS VINYA will attempt to sell the Consigned Items through its own sales efforts;

THEREFORE, the parties agree as follows:

1. VINYA’S OBLIGATIONS.

(A) PRICING. Upon receipt, review and examination of the Consigned Items, VINYA will make commercially reasonable efforts to obtain the highest reasonable possible price for the Consigned Items and, in any event, will accept no less than the minimum price set forth in the contract Agreement as the minimum sale price for the Consigned Items.

(B) DISPLAY. VINYA agrees to display the Consigned Items in a prominent place at VINYA’s primary business location during normal business hours.

(C) INSURANCE. Seller maintains and will maintain adequate insurance for theft and damage, sufficient to protect the Items while in VINYA’s possession.

2. PAYMENT TO VINYA.

After all sales taxes, VINYA will be entitled to shall retain 50% of the sales price for all Consigned Items sold pursuant to this Agreement (the “Commission”). VINYA shall pay unto the Seller the remaining balance of said sale on no later than the 15th calendar day of the following month after which the sale was made.

3. CONSIGNMENT PERIOD.

The consignment period begins upon delivery of the Consigned Items to VINYA and will terminate 90 calendar days from that time. Any Consigned Items item or items left on VINYA’s premises after 90 days may be disposed of as deemed appropriate by VINYA, including but not limited to donation to charitable causes. Any proceeds generated from the disposal or sale of said item (s) shall be solely to the benefit of VINYA and no commissions or payments of any kind will be due to any Seller.

4. SELLER’S OBLIGATIONS TO VINYA.

(A) DELIVERY OF ITEMS. Seller must schedule delivery of the Consigned Items with VINYA and all necessary shipping and handling charges are to be paid by Seller. VINYA will not be held responsible for loss or damage to the Items prior to receipt and inspection of the Consigned Items delivery.

(B) RETURN OF ITEMS. Seller shall contact VINYA by email or phone call before the 90-day Consignment Agreement expires to verify status of Item or Items and make arrangements to pick up or dispose of any Item or Items left unsold, with all shipping and handling charges to be paid by Seller.

5. DISCLAIMERS AND WARRANTY.

(A) ENCUMBRANCES. Seller represents and warrants that the Consigned Items are now and forever free, and that at the time of delivery shall be free, from any security interest, lien or any other encumbrance. Seller warrants that at the time of signing this Agreement, Seller neither knows nor has reason to know of the existence of any outstanding title or claim of title hostile to the rights of Seller in the Consigned Items. Seller covenants to forever hold VINYA harmless and indemnify it for any breach of this clause.

(B) MATERIAL DEFECTS. Seller warrants that, at the time of delivery, to the Seller's knowledge, the Consigned Items will be free from material defects in materials and workmanship. VINYA reserves the right and has the sole discretion to accept or reject any or all items of property submitted by Seller.

(C) EXCLUSIONS FROM WARRANTY. Excluded from the warranty are problems due to accidents, misuse, misapplication, storage damage, delivery damage, negligence, or other harm to the Items, provided Seller is not the direct actual cause of such problems.

(D) NO OTHER WARRANTIES. THE WARRANTY SET FORTH IN THIS SECTION 5 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY.

IN NO EVENT SHALL SELLER VINYA BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, OR USE INCURRED BY A CUSTOMER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, OR TORT, OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE SALE PRICE OF THE ITEMS.

7. TAXES.

VINYA will be responsible for the timely collection and payment of any and all city, state and federal taxes, including, without limitation, sales and use taxes with respect to the sale of the Consigned Items. VINYA agrees to will pay such taxes directly or to the State of Texas, reimburse Seller for all such taxes, whether imposed on VINYA required to be collected by Seller, or imposed on VINYA in connection with any sale.

8. MISCELLANEOUS.

(A) This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the laws of the State of Texas (exclusive of conflict of laws principles), and shall be deemed to be executed in Texas.

(B) Any legal action or proceeding relating to this Agreement shall be instituted solely in a state or federal court in Dallas County, Texas. Seller and VINYA agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

(C) All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail or by fax to the address listed below.

(D) To secure payment and performance of all VINYA's obligations hereunder, Seller hereby retains title to the Items and a security interest therein until payment in full, as referenced herein, or forfeiture of the Consigned Items, and performance by VINYA of all said obligations. When requested by Seller at the point and time of consignment, VINYA shall duly acknowledge this Agreement, and execute, acknowledge and deliver to VINYA, in Seller's usual form, a supplement hereto, security agreement, financing statement, and other appropriate instruments to acknowledge such title and security interest.

(E) In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

(F) The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. Except for actions for non-payment or breach of Seller's proprietary rights, no action, regardless of form, arising out of or in connection with this Agreement may be brought by either party more than one year after the cause of action has accrued.

(G) VINYA, where necessary and required by law, agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that the Items are not (1) exported, directly or indirectly, in violation of Export Laws; or (2) intended to be used for any purposes prohibited by the Export Laws. VINYA agrees that the Items will only be used or operated in the United States and other territories approved in writing by Seller.

(H) Seller is a private partyan independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties.

(I) This Agreement constitutes the complete agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, understandings, representations, discussions, proposals, literature, and the like, written or oral. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

(J) In any proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs incurred.

(K) This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

(L) Neither party shall be deemed to be in default of any provision of this Agreement, nor for failures in performance, resulting from acts or events beyond their reasonable control. Such acts shall include but not be limited to acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, labor disputes, parts shortages, or other events beyond the parties' reasonable control.

(M) This Agreement is not assignable, directly or indirectly, by VINYA.

(N) This Agreement may be executed in counterparts and by fax.

SELLER

By: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Seller: _____

Date: _____

VINYA: _____

Date: _____