

## **RETAILER AGREEMENT**

This Agreement (hereinafter referred to as “Agreement”) is made and entered into by and between ARCUS HINTING, LLC a Georgia limited liability company corporation with offices located at 14161 Lake Forest Drive, Unit A, Covington, GA 30014 (hereinafter referred to as “Manufacturer”) and \_\_\_\_\_, a \_\_\_\_\_ company with its principal place of business located at \_\_\_\_\_, (hereinafter referred to as “Retailer”). The date of this Agreement is \_\_\_\_\_ (the “Effective Date”).

**WHEREAS**, the Manufacturer has for many years, and is presently, engaged in the development and sale of products throughout the world (the “Products”);

**WHEREAS**, the Manufacturer is the owner of various trademarks which it uses in connection with its Products (the “Trademark(s)”);

**WHEREAS**, the Retailer is desirous of being a non-exclusive Retailer of the Products on the terms and conditions set forth herein;

**WHEREAS**, to maintain the integrity of its Products and brand, Manufacturer has established a channel limitation and warranty policy which applies to Retailers of its Products;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, Manufacturer and Retailer agree as follows:

**1. Amazon & Marketplace Sales:** Retailer will not under any circumstances sell Manufacturer’s Products to or on Amazon.com, via Amazon Vendor Central, Amazon Vendor Express, Fulfillment by Amazon (FBA), Fulfillment by Merchant (FBM), Seller Fulfilled Prime (SFP), FBA Onsite, or in any other manner which currently exists or may hereafter may be developed on the Amazon sales platform (collectively, “Amazon.com”) or on Walmart.com, Jet.com, Rakuten.com, Buy.com, Ebay or any other third-party marketplace (collectively, “Third Party Marketplaces”). Manufacturer reserves the right to cease all sales to any Retailer who violates the terms of this Agreement.

**2. Warranties:** Retailer understands and acknowledges that Manufacturer expressly disclaims any and all warranties to Products which are sold via unauthorized Retailers. Sales to or via Amazon.com and/or Third Party Marketplaces in violation of this Agreement will render Retailer as an unauthorized Retailer, thereby voiding any and all Product warranties as well as Manufacturer’s product return policies.

**3. Anti-Diversion:** In order to assure continued effective promotion of Manufacture’s products and to protect against contamination and dilution of Manufacture’s products, and for other good and valid business reasons, it is the policy of Manufacturer that:

- (1) Retailer may not sell Manufacturer’s products to any other retailer, re-seller, diverter, distributor, redistributor or wholesaler;

- (2) Retailer may not knowingly sell Manufacturer's products to any party intending to resell Manufacturer's products;
- (3) Retailer is authorized only to sell Manufacturer's products directly to end-user consumers; and
- (4) Retailer may not sell Manufacturer's products in bulk.

Retailer also acknowledges and agrees to Manufacturer's Authorized Retailer Terms & Conditions ("T&C's") set forth in Exhibit A, which shall apply to Retailer. The T&C's shall apply to all Manufacturer Products and may be adjusted by Manufacturer in its sole discretion.

**4. Business Interference:** Retailer is not authorized under this Agreement or under any other agreement or understanding between the Parties, unless expressly agreed to in writing, to be an authorized retailer of Manufacturer on Amazon.com and Third Party Marketplaces. Further, Retailer acknowledges that Manufacturer has an exclusive contractual obligation to a third-party company (that is not a party to this Agreement) to act as Manufacturer's exclusive authorized retailer on Amazon.com and Third Party Marketplaces. Therefore, Retailer agrees that if it violates this Agreement, directly or indirectly, including but not limited to, the restriction against selling to or via Amazon.com or Third Party Marketplaces, that Retailer has tortuously interfered with Manufacturer's business relationship and contractual duties with Manufacturer's exclusive authorized reseller

**5. Liquidated Damages:** Retailer acknowledges that any breach of the obligations of this Agreement, other than the obligation to pay Manufacturer for Products purchased, will cause Manufacturer monetary damages that are difficult or impossible to quantify with specificity. Retailer agrees to pay Manufacturer as a reasonable estimate of actual monetary damages from such breach(es) liquidated damages in an amount equal to \$350.00 for each separate breach for each day that any breach continues. For example, if Retailer breaches this Agreement by selling or offering to sell to customers on Amazon.com three (3) different Products for 10 days, liquidated damages shall be \$10,500 and if Retailer offers to sell fifty (50) Products on Amazon.com for a period of 30 days, the liquidated damages shall be at minimum \$525,000. The parties agree that the liquidated damages provided herein is not a penalty but is a reasonable estimate of damages that are difficult or impossible to ascertain in view of the damages anticipated by Retailer's breach(es). Liquidated damages shall be Manufacturer's exclusive monetary remedy for Retailer's breach(es) of Paragraphs 1, 2 & 3 herein, provided that Manufacturer shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing its rights hereunder, as well as all equitable relief to which it may be entitled and to terminate Retailer as a retailer of Manufacturer. For breach of any other provisions of this Agreement or any statutory or common law rights and obligations, Retailer shall not be limited to the damages formula herein, but shall be liable for all damages of Manufacturer.

**6. Restrict Sales:** Manufacturer reserves the right to fully investigate all suspected violations of this Agreement. Manufacturer reserves the right to refuse to sell Manufacturer's products to any party determined by Manufacturer to have violated this Agreement and to take such further action, legal or otherwise, as Manufacturer deems necessary and appropriate.

**7. Irreparable Harm:** Retailer acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights, intellectual property rights or confidential information of Manufacturer will cause Manufacturer irreparable injury for which there are inadequate remedies at law, and therefore Manufacturer will be entitled to equitable relief, including specific performance and/or injunctive remedies in addition to all other remedies provided by this Agreement or available at law.

**8. Name Disclosure:** Retailer acknowledges full disclosure of all of its corporate names and business names under its control to Manufacturer and has disclosed a list of any such business names to Manufacturer. Retailer understands that multiple accounts under different business names, but under the control of a parent corporation or owner with Manufacturer are not permitted. All orders with Manufacturer shall come from the Parent corporation or business.

**9. Indemnification:** Retailer shall at all times during and after the term of this Agreement be responsible for, and shall defend, indemnify, and hold Manufacturer harmless from and against any and all losses, claims, suits, proceedings, expenses, recoveries, and damages, including reasonable legal expenses and costs including attorneys' fees, arising out of any claim by a third party relating to the Product, or any aspect of the performance of this Agreement, to the extent such liability results from the negligence or willful misconduct of Retailer in selling, processing, packaging or storing the Product, or any breach of a representation or warranty given herein by Retailer, provided, however that Manufacturer shall give Retailer prompt notice of any such claim or lawsuit and, provided further, that Retailer shall have the right to compromise, settle, or defend such claim or lawsuit.

**10. Limitation of Liability:** MANUFACTURER SHALL NOT BE LIABLE TO RETAILER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF SALES, OR LOSS OF PROFITS. THE AGGREGATE LIABILITY OF MANUFACTURER FOR ANY DAMAGE OR THAT OF ANY THIRD PARTY CAUSED BY ITS PRODUCTS OR OTHERWISE BY ITS ACTS OR OMISSIONS, SHALL NOT EXCEED, IN RESPECT OF ANY CLAIM ARISING OUT OF A SINGLE EVENT OR A SERIES OF CONNECTED EVENTS, THE AGGREGATE AMOUNT PAYABLE BY RETAILER TO MANUFACTURER DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE CAUSATION OF ANY DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL APPLY HOWEVER THE LOSS OR DAMAGE IS CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, BREACH OF CONTRACT, DELAY OF PERFORMANCE, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

**11. Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY SECTION OF THE DOCUMENTS ACCOMPANYING THE PRODUCTS OR IN PRODUCT LITERATURE FURNISHED BY MANUFACTURER CONTAINING PRODUCT WARRANTIES, AS IN EFFECT FROM TIME TO TIME (THE "STATEMENT OF WARRANTY"), ALL MANUFACTURER PRODUCTS ARE SOLD ON AN "AS IS" BASIS AND MANUFACTURER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE OR KIND REGARDING THE PRODUCTS. MANUFACTURER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM OF TRADE OR OTHERWISE. THE SOLE OBLIGATION AND LIABILITY OF MANUFACTURER IN RESPECT OF ITS WARRANTY AS SET FORTH IN THE STATEMENT OF WARRANTY SHALL BE, AT ITS OPTION, TO REPAIR OR REPLACE THE RELEVANT PRODUCT AT ITS COST.

**12. Term:** This Agreement shall last for a period of one (1) year, and shall automatically renew for subsequent 1-year terms until terminated as set forth herein.

**13. Termination:** If either party breaches or defaults in the performance or observance of any of the material provisions of this Agreement, the non-defaulting party shall have the right to terminate this Agreement upon giving ten (10) days written notice to the defaulting party. In the case of a material breach or default, the non-defaulting party shall provide a period of ten (10) days from the date of receipt of the notice of default to allow for the defaulting party to cure under the terms of the Agreement. Upon termination, Retailer shall immediately cease all marketing and sales of the Products, and shall cease all use of any Product packaging and advertising materials bearing any of the Trademarks.

This Agreement terminates automatically, with no further act or action of either party, if: (1) a receiver or trustee is appointed for Retailer or its property or Retailer is adjudged bankrupt, (2) Retailer makes an assignment for the benefit of its creditors, (3) Retailer becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, (4) Retailer becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing, or (5) Retailer is liquidated or dissolved. Manufacturer may terminate this Agreement at any time for any reason. On the expiration or termination of this Agreement:

- (A) All the rights and obligations of the Parties shall terminate, except as explicitly provided otherwise in this Agreement;
- (B) Retailer's rights hereunder to use the Trademarks shall revert automatically to Manufacturer;
- (C) Retailer immediately shall discontinue all use of the Trademarks; and
- (D) Retailer no longer shall have the right to use and exploit the Trademarks, nor any variation or simulation thereof which is substantially similar thereto.

**14. Trademarks:** During the term of this Agreement and subject to the terms and conditions specified herein, Manufacturer grants to Retailer a non-exclusive, nontransferable, limited license to use Manufacturer's Trademarks only as necessary for Retailer to fulfill its obligations hereunder. Retailer's use of such trademarks, trade names, logos and designations will be in accordance with Manufacturer's policies in effect from time to time. Retailer agrees not to attach any additional trademarks, trade names, logos or designations to any Manufacturer Product. Retailer further agrees not to use any Manufacturer trademark, trade name, logo or designation in connection with any non- Manufacturer Product. Manufacturer reserves the right to review planned uses of its trademarks, trade names, logos and designations to confirm that they are within the guidelines, prior to usage of such trademarks by Retailer.

Manufacturer shall have the right to exercise quality control over the use of its Trademarks by the Retailer to the degree necessary, in the sole opinion of the Manufacturer, to maintain the validity and enforceability of such Trademarks and to protect the goodwill associated therewith. Retailer shall, in its use of the Trademarks, adhere to a level of quality at least as high as that used by Manufacturer in connection with its use of its own Trademarks. If Manufacturer, in its reasonable opinion, finds that Retailer's use of the Trademarks (or any of them) threatens the goodwill of the Trademarks (or any of

them), Retailer shall, upon notice from Manufacturer, immediately, and no later than ten (10) days after receipt of such notice, take all measures reasonably necessary to correct the deviations or misrepresentations in, or misuse of, the respective items.

Retailer has paid no consideration for the use of Manufacturer's trademarks, trade names, logos, designations or copyrights, and nothing contained in this Agreement will give Retailer any right, title or interest in any of them. Retailer acknowledges that Manufacturer owns and retains all trademarks, trade names, logos, designations, copyrights and other proprietary rights in or associated with Manufacturer Products, and agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any trademark, trade name, logo, designation or copyright belonging to or licensed to Manufacturer (including, without limitation any act or assistance to any act, which may infringe or lead to the infringement of any of Manufacturer 's proprietary rights).

Retailer shall submit all prospective advertising and marketing materials incorporating the Trademarks, or otherwise relating to the Products, to Manufacturer for approval prior to any publication, distribution or other use of the same. Unless and until Manufacturer provides such approval, Retailer shall not publish, distribute or otherwise use such prospective advertising and marketing materials nor permit any third party to publish, distribute or otherwise use the same in any manner.

Retailer shall respect the original graphics of the Trademark and Designs and shall not remove, change, modify, or make any additions to the Trademark and Designs as used in connection with the Products without the prior written approval of Manufacturer. Manufacturer shall have the right at any time, and from time to time, to obtain photographs or samples from Retailer of all materials used by Retailer which display the Trademark and Designs, and Manufacturer may, in its sole and absolute discretion, require Retailer to discontinue the use of any materials which, in the sole judgment of Manufacturer, may be detrimental to the goodwill embodied in such Trademark and Designs. If Manufacturer requires Retailer to discontinue the use of any such materials under the provisions of this subparagraph, such discontinuation shall apply prospectively only, such that Retailer shall have no obligation to retrieve or otherwise eliminate any complained-of materials already appearing in publications or otherwise in advertisements by third parties not under the control of Retailer.

Retailer shall use the Trademarks in accordance with sound trademark and trade name usage principles and in compliance with all applicable laws and regulations of the United States (including without limitation all laws and regulations relating to the maintenance of the validity and enforceability of such Trademarks) and shall not use the Trademarks in any manner that might tarnish, disparage, or reflect adversely on the Trademarks or the Manufacturer. Retailer shall use, in connection with Manufacturer's Trademarks, all legends, notices and markings required by law. Retailer may not alter the appearance of the Trademarks in any advertising, marketing, distribution, or sales materials, or any other publicly distributed materials without the prior written consent of the Manufacturer.

Retailer agrees to use reasonable efforts to protect Manufacturer's proprietary rights and to cooperate at Retailer's expense in Manufacturer's efforts to protect its proprietary rights. Retailer agrees to promptly notify Manufacturer of any known or suspected breach of Manufacturer's proprietary rights that comes to Retailer's attention.

Retailer shall not enter into any contracts or engage in any practice which is detrimental to the interests of Manufacturer in its Products or Trademarks, and the goodwill associated therewith.

Retailer shall not use Manufacturer's Trademarks, advertising, marketing, distribution, or sales materials, or any other materials for the purpose of creating new listings or altering existing listings on the Amazon.com or other Third Party Marketplaces including but not limited to Walmart, Ebay, Jet, and Rakuten. Manufacturer retains the express right as the only party permitted to maintain and update all content of Manufacturer listings found on the Amazon.com and Third Party Marketplaces, including listing creation.

**15. Assignment:** The parties may not assign any right or obligation hereunder without the written consent of the other party, wherein consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns. Any attempted assignment in violation of this provision shall be void and of no effect.

**16. Choice of Law and Jurisdiction:** This Agreement is deemed to have been entered into in the State of Georgia, and its interpretation, construction, and the remedies for its enforcement or breach are to be applied pursuant to and in accordance with the laws of the State of Georgia. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal Courts located in Newton County, Georgia. The parties waive the right to contest exclusive venue by any motion to transfer, motion for forum non-conveniens or related motions.

**17. Waiver:** No waiver of any right under this Agreement shall be deemed effective unless contained in writing and signed by the party charged with such waiver, and no waiver of any right shall be deemed to be a waiver of any future right or any other right arising under this Agreement. All rights, remedies, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and none of them shall be a limitation of any other remedy, right, undertaking, obligation, or agreement.

**18. Invalidity:** In the event that any portion of this Agreement is declared invalid or unenforceable for any reason, such portion is deemed severable, and the remainder of this Agreement will be deemed and remain fully valid and enforceable, unless such invalidity and unenforceability tends to substantially deprive any Party of the benefits to be provided to it by this Agreement, in which case said deprived Party will have the option of keeping this agreement or terminating it.

**19. Notice:** Any notice, consent, or approval permitted or required under this Agreement shall be in writing and shall be sent by registered or certified mail, postage pre-paid, or by overnight courier, or by facsimile or telex (confirmed by mail), to the addresses set forth above or to such other address in the United States that the parties may hereafter specify.

All notices shall be deemed to be effective on the date of receipt.

**20. Attorneys' Fees:** In the event that Retailer fails to satisfy its commitments hereunder or otherwise breach the terms of this Agreement, or if Manufacturer seeks judicial resolution to enforce any of the terms of this Agreement, then the Retailer agrees to and shall reimburse Manufacturer for all reasonable attorney's fees and court/litigation expenses.

## Exhibit A

### Authorized Retailer Terms & Conditions

To protect and promote our brand and reputation for providing high-quality products, ARCUS COMPANY (“ARCUS”) has established these Authorized Retailer Terms & Conditions (the “Terms”), effective immediately, which apply to authorized retailers of ARCUS products (the “Products”). By purchasing from ARCUS for retail sale, you (“Retailer”) agree to adhere to the following terms. Please read these Terms carefully.

1. **Purchase Orders.** Orders for Products made by Retailer shall be handled pursuant to the then-current product order, shipment, and return procedures, which may be amended by ARCUS at any time in its sole and absolute discretion. ARCUS reserves the right to reject any orders, in whole or in part, for any reason. Any additional or different terms proposed by Retailer (including, without limitation, any terms contained in any document incorporated by reference into a purchase order) are rejected and will be deemed a material alteration hereof, unless expressly agreed to in writing by ARCUS. Furthermore, ARCUS will not be bound by any "disclaimers", "click wrap" or "click to approve" terms or conditions now or hereafter contained in any website used by Retailer in connection with the Products or any sale thereof. ARCUS will provide a Manufacturer Warranty for all Products sold by Retailer to authorized end users. If a Product contains a manufacturing defect at the time of purchase or had been damaged by improper care before the time of purchase, ARCUS will replace the Product.
  
2. **Manner of Sale.** Retailer shall sell the Products only as set forth herein. Sales in violation of the Terms are strictly prohibited and may result in ARCUS’ immediate termination of Retailer’s account, in addition to other remedies. Furthermore, Products sold to unauthorized persons or through unauthorized channels, including unauthorized websites, will render Retailer as an unauthorized Retailer, thereby voiding any and all Product warranties as well as Manufacturer’s product return policies.
  - (a) Retailer shall sell Products solely to end users of the Products. Retailer shall not sell to anyone a quantity of the Products greater than that generally purchased by an individual for personal use. Retailer may not sell ARCUS’s products to any other retailer, re-seller, diverter, distributor, redistributor or wholesaler .
  
  - (b) Retailer shall not sell, ship or invoice Products to customers outside of the United States or to anyone Retailer knows or has reason to know intends to ship the Products outside of the United States without the prior written consent of ARCUS.
  
  - (c) Retailer is permitted to market for sale or sell the Products through websites owned or operated by Retailer; provided however, that such websites identify Retailer’s full legal name, mailing address, telephone number and email address. ARCUS, in its sole discretion, may revoke Retailer’s authorization to sell the Products on such websites at any time, and Retailer shall cease marketing for sale and/or selling the Products on such website immediately upon notice of such revocation. Retailer shall ***not*** sell the Products on or through any other website,

including any third-party marketplace website such as Amazon, eBay, Jet, Rakuten, Walmart Marketplace, or Sears Marketplace, without the prior written consent of ARCUS, which is granted solely by ARCUS. No ARCUS employee or agent can authorize online sales through oral statements, other written agreement, or by any other means.

- (d) Retailer shall comply with any and all applicable laws, rules, regulations and policies related to the advertising, sale and marketing of the Products.

**3. Product Care & Quality Controls.** Retailer shall care for the Products as set forth herein.

- (e) **Product Inspection.** Retailer shall inspect the Products upon receipt and during storage for damage, defects, broken seals, evidence of tampering or other nonconformance (collectively, “Defects”). Retailer shall also inspect its inventory regularly for expired or soon-to-be expired Products and shall remove those Products from its inventory. Retailer shall not sell any Products that are expired. If any Defects are identified, Retailer must not offer the Product for sale and must promptly report the Defects to ARCUS.
- (f) **Product Storage and Handling.** Retailer shall exercise due care in storing and handling the Products, store the Products in a cool, dry place, away from direct sunlight, extreme heat, and dampness, and in accordance with any additional storage guidelines specified by ARCUS from time to time.
- (g) **Recalls and Consumer Safety.** To ensure the safety and well-being of the end-users of the Products, Retailer shall cooperate with ARCUS with respect to any Product recall or other consumer safety information dissemination effort.
- (h) **Alterations & Bundling Prohibited.** Retailer shall sell Products in their original packaging,. Retailer shall not sell or label the Products as “used”, “open box” or any other similar descriptors. Relabeling, repackaging (including the separation of bundled products or the bundling of products), misbranding, adulterating, and other alterations are not permitted. Retailer shall not tamper with, deface, or otherwise alter any batch code or other identifying information on Products or packaging. Retailer shall not remove or destroy any copyright notices, trademarks or other proprietary markings on the Products, documentation, or other materials related to the Products. Removing, translating, or modifying the contents of any label or literature accompanying the Products is prohibited. Retailer shall not advertise, market, display, or demonstrate non-ARCUS products together with the Products in a manner that would create the impression that the non-ARCUS products are made by, endorsed by, or associated with ARCUS.
- (i) **Customer Service & Product Representations.** Retailer and Retailer’s sales personnel shall familiarize themselves with the features of all Products marketed for sale and must obtain sufficient Product knowledge to advise end-user customers on the selection and safe use of the Products, as well as any applicable warranty or return policy. Retailer must make itself available to respond to customer questions and concerns both before and after sale of the Products and should endeavor to respond to customer inquiries promptly. Retailer and Retailer’s agents must represent the Products in a professional manner and refrain from any



conduct that is or could be detrimental to the reputation of ARCUS. Retailer agrees to cooperate fully with ARCUS in any investigation or evaluation of such matters.

2. **Intellectual Property.** ARCUS owns all proprietary rights in and to the ARCUS brand, name, logo, trademarks, service marks, trade dress, copyrights, and other intellectual property related to the Products (the "IP"). Retailer is granted a limited, non-exclusive, non-transferable, revocable license to use the IP solely for purposes of marketing and selling the Products as set forth herein. This license will cease upon termination of Retailer's status as an Authorized Retailer. ARCUS reserves the right to review and approve, in its sole discretion, Retailer's use or intended use of the IP at any time, without limitation. All goodwill arising from Retailer's use of the IP shall inure solely to the benefit of ARCUS.
3. **Termination.** If Retailer violates any of the Terms, ARCUS reserves the right to terminate the Terms immediately in addition to all other available remedies. Upon termination, Retailer will immediately lose its status as an Authorized Retailer and shall immediately cease (i) selling the Products; (ii) acting in any manner that may reasonably give the impression that Retailer is an Authorized Retailer or has any affiliation with ARCUS; and (iii) using any IP.
4. **Availability of Injunctive Relief.** Notwithstanding anything to the contrary herein, if there is a breach or threatened breach the Terms, it is agreed and understood that ARCUS will have no adequate remedy in money or other damages at law. Accordingly, ARCUS shall be entitled to injunctive relief and other equitable remedies; provided, however, no specification in the Terms of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of the Terms. No failure, refusal, neglect, delay, waiver, forbearance, or omission by ARCUS to exercise any right(s) herein shall constitute a waiver of any provision herein.
5. **Miscellaneous.** ARCUS reserves the right to update, amend, or modify the Terms upon written or electronic notice to Retailer. Unless otherwise provided, such amendments will take effect immediately and Retailer's continued use, advertising, offering for sale, or sale of the Products, use of the IP, or use of any other information or materials provided by ARCUS to Retailer under the Terms following notice will be deemed Retailer's acceptance of the amendments. No waiver of any breach of any provision of the Terms shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, nor shall it constitute a course of dealing and no waiver shall be effective unless made in writing. If any provision of the Terms is held contrary to law, the remaining provisions shall remain valid. The following provisions shall survive the termination of the Terms: Sections 3 and 7. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TERMS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PARTIES ACTIONS IN THE NEGOTIATIONS, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.**

