

NEWEGG CANADA MARKETPLACE SELLER AGREEMENT

Welcome to Newegg Canada Marketplace, a service that allows you to list your products for sale directly on the www.newegg.ca website ("Website"). By clicking through this Newegg Canada Marketplace Global Seller Agreement ("Agreement"), you, on behalf of yourself or the business you represent (collectively, "Seller") are entering into a binding contract with Newegg Canada Inc. ("Newegg") and Seller agrees to be bound by the terms of this Agreement. This Agreement is deemed executed on the date Seller clicks through the Agreement.

1. Definitions

- The following definitions apply to this Agreement:
- 1.1. "Categories" means those categories and sub-categories of Newegg's merchant directories located at <https://www.newegg.ca/sellers/> and as may be amended from time to time in Newegg's sole discretion.
- 1.2. "Customers" means consumers and visitors to the Website.
- 1.3. "Seller Marks" means Seller's trademark, tradenames, service marks, service names, logos and distinct brand elements associated with Seller's products.
- 1.4. "Pre-existing Product Information" means Product Information for any Product which is already listed for sale on the Website before Seller attempts to list that Product on the Website.
- 1.5. "Seller Portal" means the section of the Website provided by Newegg for Sellers to access their Newegg Seller account.
- 1.6 "Product(s)" means those products for which Seller provides Newegg with Product Information, specifically excluding any "Prohibited Items" as designated in this Agreement or by Newegg in the Seller Portal.
- 1.7. "Product Information" means specifications, pricing, product images and other information related to the Product.
- 1.8. "Suggested Product Price" means the sales price suggested by Seller to Newegg for the sale of a Product by Newegg to Customer.
- 1.9. "RMA Portal" means the section of the Website provided by Newegg for the processing of Customer returns.
- 1.10. "Website" means, collectively, Newegg's website with the primary home page located at www.newegg.ca.
- 1.11. "Discount" means the percentage discount applied to the Suggested Product Price for a Product, if applicable and as listed on the Seller Portal or Addendum A at the time of the sale of such Product.
- 1.12. "Seller's Price" means with respect to any Product the "Suggested Product Price" at the time of shipment by the Seller less the Discount for the Product.

2. Seller Qualification

- Newegg has sole discretion in evaluating each individual Seller's suitability to participate in the Website and related listing services. At the time Seller applies to participate, and periodically throughout the term of this Agreement, Newegg will review certain Seller characteristics, including but not limited to, product offerings, product liability and compliance history, business and financial

standing, and whether Seller could be construed as a current or potential competitor to Newegg or of a Newegg affiliated company, and Newegg reserves the right, in its sole and complete discretion, to reject any Seller applicant, or to terminate any participating Seller, which Newegg deems not to be suitable to participate in the Website and related listing services.

3. Products and Pricing

- 3.1. Except as provided below, Seller shall provide Newegg with all Product Information to be displayed on the Website, through the Seller Portal provided by Newegg. On an on-going basis, Seller will update Product Information as necessary and appropriate including, but not limited to:
 - brief product description (*less than 400 characters*)
 - specifications, if any
 - images (*as specified in the Newegg Data Feed Template*)
 - manufacturer part number
 - amount of inventory
 - suggested selling price (*Suggested Product Price*)
 - shipping
 - insurance options
 - warranty
 - RMA procedureSeller is fully responsible for the accuracy of all information submissions to Newegg pertaining to Products to be listed and/or sold.
- 3.2. Unless otherwise approved in writing by Newegg, Seller must offer a thirty (30) day replacement or money-back guarantee for all Products, which guarantee or replacement must be at least as favorable to Customers as Newegg's standard return policy. Sellers who offer any warranty must honor the terms and/or conditions presented at the time of purchase.
- 3.3. Seller agrees that any Product Information may be publicly displayed by Newegg as Newegg sees fit and at no charge to Newegg. Seller grants to Newegg an irrevocable, perpetual, sublicensable, transferable, non-exclusive, royalty-free and fully paid-up, worldwide right and license to, during the term of the Agreement, use, copy, transmit, perform, display, modify and create derivative works, incorporate and imbed into other works, and distribute such Product Information throughout the Website in any medium or form now existing or later created.
- 3.4. Seller is solely responsible to ensure that all Product Information displayed on the Website is accurate. In order to prevent inaccuracies, Seller shall (i) immediately correct any erroneous pricing, inventory, and shipping information; (ii) immediately notify Newegg of any erroneous Product description; and (iii) provide Newegg with updated Product and Suggested Product Price information at least twice per week, or as requested by Newegg, or when Product mix, inventory, or prices change. Seller shall immediately notify Newegg in writing of any private or public recall of any of its Products. In addition, Seller's Product Information shall comply with all Newegg Marketplace content policies.
- 3.5. Seller agrees to exclude all promotions, coupons, bundle discounts or similar discounts when calculating Suggested Product Prices that are provided to Newegg.

- **3.6. Prohibited Products.** "Prohibited Items" as used herein consist of products listed on the Prohibited Items List maintained on Newegg's website, as updated from time to time, which is incorporated by this reference. Prohibited Items include, but are not limited to, products containing alcohol or tobacco, prescription drugs, and weapons. Seller shall not list or offer for sale, or attempt to list or offer for sale, any Prohibited Items on the Website. In addition, Seller must not provide any product that may be potentially illegal, obscene, or might infringe on the intellectual property rights of any party, including all restricted content and products listed as such in the Seller Portal. In the event Seller lists or offers for sale, or attempts to list or offer for sale, any Prohibited Item on the Website, Newegg shall be authorized to deduct the sum of \$10,000 from the Net Sales Price (defined below) otherwise to be remitted to Seller. Seller agrees that said sum shall be an administrative fee to compensate Newegg for the cost of removing such Prohibited Item, and Seller's payment of such sum shall not limit its liability to Newegg or waive any rights Newegg may have under this Agreement, including but not limited to indemnity rights.
- **3.7.** Seller acknowledges and agrees that: (a) inaccuracies in information provided to Newegg; (b) failure to provide Newegg with updated Product and pricing information; (c) illegal or deceptive practices by Seller; (d) complaint(s) from users regarding Seller's conduct of business; and/or (e) any breach of Section 3.6 or this Section 3.7, constitute sufficient cause for the immediate removal of Seller from the Website and the immediate termination of this Agreement by Newegg, in its sole discretion and without any prior notification to Seller or opportunity for Seller to cure any of the foregoing. Newegg, in its sole discretion, may refuse any listing or remove any Prohibited Item or other listing which violates this agreement, at any time. In the event of removal of Seller or its Product(s) from the Website, Newegg, in its sole discretion, is entitled to indicate on the Website that Seller and Products have been removed from the Website, and to provide notification to customers who purchased such Products.
- **3.8.** Notwithstanding anything to the contrary in this Agreement, Seller shall have no right to modify, delete or augment Pre-existing Product Information, and Newegg reserves the right to enact technical features to prevent Seller from so doing.

4. Display of Pricing Information

- Newegg shall use commercially reasonable efforts to display Product, product pricing, and Product Information on the Website. However, notwithstanding anything in this Agreement to the contrary, Newegg reserves the right to not display any information concerning any Product which Newegg, in its sole discretion, has determined is of a quality and nature inconsistent with Newegg's standards, or is otherwise deemed by Newegg, in its sole and absolute discretion, to be inappropriate or undesirable for listing on the Website. Seller understands and acknowledges that some or all of the Seller's information may unintentionally be omitted or incorrectly displayed on the Website. Under no circumstances shall Newegg be liable for any damages to Seller arising out of any unintentional errors and/or omissions in the display of Seller's information on the Website, any user's use of the Website and/or the activities of any users.

5. Transaction Process & Payment Stream

- 5.1 **General.** In addition to all other Seller requirements set forth in this Agreement, Seller must provide Newegg with (1) Seller's valid bank account number with ACH authorization, (2) Seller's completed T4/W-8BEN form, and (3) a valid corporate credit card. Further, Seller agrees to pay Newegg a \$1.00 authorization fee for verification of each such account. Until Seller complies with all requirements in this section 5.1, Newegg shall be under no obligation to remit any Sales Proceeds, as defined below, to Seller.
- 5.2 **Orders and Taxes.** Seller agrees to sell the Products for listing and resale on the Website in accordance with this Agreement. When a Customer orders a Seller Product through the Website, the Customer's purchase of the Product ("checkout process") will take place solely through the Website, and Customer will not be routed to Seller's website, if any, in order to complete the purchase. Seller shall be the party selling to the Customer. As part of the checkout process, Newegg will calculate, display to Customer and charge Customer, the following:
 - Sales price of the Product as determined by Newegg, including any discounts or instant rebates thereto;
 - Shipping and handling fees calculated in accordance with this Agreement ("Shipping Fees");
 - GST, PST, HST, QST or any other similar taxes required by applicable law to charge, collect and remit, no matter whether Seller has a tax ID or not (collectively, "Sales Taxes") and remit the tax collected directly to federal / provincial government on behalf of the Seller;
 - Applicable electronic handling fees or recycling fees for Products to be shipped to any jurisdiction for which Newegg determines it is required to charge and collect such fees (collectively, "Recycling Fees"), provided Newegg will collect and remit on behalf of the seller such Recycling Fees to the appropriate taxing authority(ies);
 - Any other applicable taxes, duties or levies required to be charged by Newegg pursuant to the laws of any jurisdiction on the sale of a Product (collectively, "Miscellaneous Charges").
 - Seller will be treated as the "retailer of record" for determining what sales tax, if any, needs to be collected on the sale of the Product. Newegg reserves the right to notify the Customer that the Product will be shipped to customer by Seller.
 - Nothing in this Agreement or elsewhere shall make Newegg responsible for taxes on Seller's income or gross receipts.
- 5.3 **Shipping/Order Fulfillment.** For each Product which is listed for sale on the Website, Seller will select, via the Seller Portal or electronic data interchange ("EDI"), a shipping option. For each Product purchased through the Website, Newegg will charge the Customer a Shipping Fee based upon the shipping option selected by Seller for such Product. Newegg will remit that Shipping Fee to Seller within the time specified elsewhere in this Agreement, and Seller agrees to accept the Shipping Fee so remitted as payment in full for Seller's shipping and handling costs associated with that order. Seller understands and agrees that its actual shipping and handling costs may not be equal to the Shipping Fee charged to the Customer.
Newegg shall not be responsible to process or fulfill any orders of Products through the Website.

Seller agrees to process and fulfill all orders of Products through the Website in accordance with the following terms:

- For shipment originating outside of Canada, Seller shall be treated as the importer of the ordered Product and shall be solely responsible to pay all import duties, fees and other expenses associated with importing the Product into Canada.
- For shipment within Canada, Seller must ship all ordered Products by one or more of the common carriers listed on the Newegg Authorized Carrier list, all at Seller's own expense, the shipment must be traceable;
- Seller must ship orders Delivered Duty Paid (Incoterms 2010) to the Customer, inclusive of all import duties and/or import taxes;
- Seller shall not use its own trucks or a contract carrier for shipment of Products;
- Seller shall purchase all shipping materials and containers at its own expense;
- Seller may not insert any advertising, promotional or marketing material into shipping cartons containing Products for delivery to a Customer;
- Seller will ship all ordered Products no later than forty-eight (48) business hours after receiving order notification from Newegg;
- Seller will provide Newegg with notification, including tracking information, following the actual shipment of the Product to Customer. If Newegg fails to receive Seller's shipment notification within the forty-eight (48) business hours shipment window, Newegg may cancel the order, and have no liability with respect to such cancellation, including without limitation, any shipment made in reliance upon such order;
- Seller assumes all risk of loss for shipment of Products to the Customer;
- **5.4 Payment to Seller.** Except otherwise provided herein, Newegg shall remit to Seller the Seller Price and Shipping Fee for each Product purchased through the Website (the "Net Sales Price").
 - Newegg shall only remit to the bank account which seller is the lawful owner and beneficiary of the account.
 - For sales orders with accurate tracking information showing a delivered status, the Net Sales Price shall be remitted to Seller on or after the 7th days after the sales orders' actual delivery date provided by the shipment carriers.

For sales orders with accurate, traceable tracking information but no status for delivery, the Net Sales Price shall be remitted to Seller on or after the 30th days after the shipment date of such orders.

For sales orders with no accurate, traceable tracking information, no Net Sales Price will be remitted to Seller.

When the payment date set forth above falls on a bank holiday or a public holiday, the payment to seller shall be made on the next business day. All times stated are local to Ontario, Canada.
 - The Net Sales Price shall be remitted, at Newegg's option, by bank wire transfer, by check, or by any other available money transfer and payment services Newegg may partner with.
 - In the event Seller changes its bank account information previously provided to Newegg, Newegg may delay remittance of a Net Sales Price by up to 7 calendar days beyond the otherwise applicable remittance date.

- Newegg reserves the right to deduct from the Net Sales Price any amounts owed to Newegg under this Agreement, including but not limited to amounts owed pursuant to Section 5.5 or Section 5.7, and any amounts owed to Newegg pursuant to any “Shipped by Newegg” agreement to which Seller is a party.
 - Newegg reserves the right to withhold such amount(s) due to Seller, in Newegg’s reasonable discretion, to account for potential returns or chargebacks for a period of up to sixty (60) days. In making any determination to withhold, Newegg will take into consideration the historical return rate of Seller’s Products as well as the chargeback rate on Seller transactions.
 - Newegg reserves the right to hold any payment(s) due to Seller for failure to meet Seller’s performance requirements, as set by Newegg. Seller’s performance reports are reviewed on a regular basis, by month and/or quarter.
- **5.5 Customer Support/Returns.** All Customer disputes, returns, claims, refunds, etc., are Newegg’s responsibility, subject to the requirements of this section. Unless otherwise approved in writing by Newegg, all returns shall be handled by Seller directly with the Customer pursuant to Seller’s thirty (30) day replacement or money-back guarantee, which permits a Customer who purchases a Product on the Website to return it for a refund or exchange, with no charge for return shipping labels for products up to 50 pounds, for at least 30 calendar days from the date the Product is delivered to the Customer. Notwithstanding the foregoing, in the event of the return or exchange of any Product where the customer is not at fault due to reasons including but not limited to receiving a Product which is defective or receiving an incorrect or different item other than what was ordered, Seller shall acknowledge full liability for the return shipping label, irrespective of the weight of the package and such returning shipping label shall be provided to the customer at no charge to the customer. Newegg may provide Seller’s e-mail address and/or other contact information to Customers who purchase Products. Seller must respond promptly to all Customer inquiries before close of the following business day. With respect to any Product returned to Newegg by a Customer, Newegg reserves the right to ship the Product to Seller and bill Seller for Newegg’s actual shipping cost. Seller, not Newegg, shall have title to all Products returned by a Customer to Newegg or Seller, and Seller shall bear all risk of loss as to such returned Products.
- Within two (2) business days of Seller’s receipt of Product returned by Customer via an approved RMA request, Seller must provide prompt refunds to Customer in cases of shipment damage and/or non-conformity with product description. Where Seller receives a Customer notice of non-delivery, Seller will resolve the issue and/or refund the Customer within two (2) business days from the date of Customer’s notification to Seller.
 - If Newegg receives a Customer complaint regarding any Seller Product or Seller’s fulfillment or Seller’s customer service, Newegg reserves the right to investigate the complaint, with the full cooperation of Seller. In response to such complaint, Seller agrees that Newegg shall have complete discretion to provide such Customer a full or partial refund or other payment, and Seller agrees to promptly reimburse Newegg for any such refund or payment. For ease of processing, Seller expressly grants Newegg the authority to, at Newegg’s option, deduct such refund or payment from the Net Sales Price otherwise to be remitted to Seller.
 - In the event Seller refunds money to a Customer, Newegg will pay the Discount to Seller, or a prorated portion of the Discount in the event Seller provides Customer with only a partial

refund (whether because of the application of a restocking fee or any other reason). Newegg will remit the amount to be refunded from time to time together with the next remittance to be made by Newegg to Seller.

- Unless otherwise approved in writing in advance by Newegg, Seller agrees not to charge any Customer any restocking fee on returns or exchanges of any Product purchased on the Website regardless of RMA reason and regardless of Product weight.
- **5.6 Risk of Loss.**
 - **General.** Except as specified below, Seller shall bear all risks associated with, or related to, any Product purchased by a Customer through the Website, including but not limited to product defects, non-delivery, mis-delivery, theft, mistake or Customer fraud. Seller will be responsible to ensure that all Products are shipped in compliance with all applicable laws and regulations, including but not limited to hazardous materials laws and regulations.
 - **Credit Card Fraud.** Newegg will bear the risk of credit card fraud occurring in connection with a purchase of a Product through the Website. As used herein, the term “credit card fraud” means the fraudulent purchase of a Product arising from the theft and unauthorized use of a third party's credit card information. However, Newegg will not bear the risk of credit card fraud in connection with Seller's fulfillment of a Product which is not fulfilled strictly in accordance with this Agreement. Seller will be responsible for all other risk of fraud or loss. Seller shall promptly notify Newegg of any credit card fraud of which it becomes aware pertaining to a Customer.
- **5.7 Chargebacks.** If Newegg informs Seller that Newegg has received a chargeback or other dispute with respect to any Seller Product ordered through the Website, Seller will deliver to Newegg within five (5) business days after Newegg's request the following: (a) proof of delivery of the Product (b) the applicable Newegg sales order number and (c) a description of the Product as applicable. If Seller fails to comply with the previous sentence, or if the chargeback or other dispute is not caused by credit card fraud as defined in Section 5.6 above, then Seller shall promptly reimburse Newegg for the amount of the Net Sales Price, and all associated credit card association (Visa, Mastercard, American Express, and Discover), bank or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, to the extent paid by Newegg. Seller expressly grants Newegg the authority to, at Newegg's option, deduct such amounts from the Net Sales Price otherwise to be remitted to Seller.
- **5.8 Credit Card Authorization.** For any undisputed amount(s) Seller may owe to Newegg under this Agreement, Newegg may charge the Seller's corporate credit card on file. Seller hereby acknowledges and authorizes Newegg to charge such credit card without the need for further notice on Newegg's part.

6. Sales Reports

- The Website shall provide Seller with web-based information on the Seller Portal portion of the Website, to enable Seller to check its sales performance, including breakdowns of sales, discounts, shipping fees, and sales taxes.

7. Confidentiality & Privacy

- 7.1. Confidentiality. Newegg and Seller acknowledge that, in the course of performing their obligations under this Agreement, each party may acquire information, identified as confidential, about the other party, its business activities and operations, its technical information and trade secrets, of a highly confidential and proprietary nature, including without limitation, merchandising records, Customer records and mailing lists, systems information, technology, technical information, and general financing and business plans and information (all such information relating to Newegg or Seller being "Confidential Information" and the party to whom such Confidential Information relates being the "Disclosing Party"). Each Party, during the Term of this Agreement and for a period three (3) years after termination of this Agreement, shall hold such Confidential Information in confidence, shall not disclose such Confidential Information except to its officers, advisors, consultants or employees who have a reasonable need to know such Confidential Information, and have executed confidentiality agreements at least as restrictive as those contained in this provision. Each party shall use at least as great a standard of care in protecting the other party's Confidential Information as it uses to protect its own Confidential Information of like character, but in no event less than a reasonable degree of care. Neither party shall disclose Confidential Information to any third party without the prior written approval of the other party, and shall return or destroy all such Confidential Information upon request of the disclosing party. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided hereunder. For purposes of clarity, information concerning Customers, including but not limited to, Customer's personal information as defined by the applicable privacy law ("Personal Data") shall be deemed the sole property and Confidential Information of Newegg alone.

Seller shall not: (i) "sell", as defined by the California Consumer Privacy Act (the "CCPA") Personal Data under the CCPA; (ii) retain, use, or disclose Personal Data for any purpose other than for the specific purpose of performing the services specified in this Agreement; or (iii) retain, use, or disclose the information outside of the direct business relationship between Newegg and Seller. Seller certifies that it understands the restrictions set forth in this paragraph and that it will comply with them.

Seller will promptly notify Newegg about: (i) any accidental or unauthorized access to the Personal Data; and (ii) any requests it receives directly from Customers, pursuant to the CCPA.

Seller will promptly, adequately and accurately respond to all inquiries from Newegg concerning its processing of Personal Data.

- 7.2. Privacy Policy. In addition to Seller's obligations with respect to Confidential Information and Personal Data, Seller must comply with Newegg's privacy policy and any privacy policy applicable to Newegg also applies to Seller. In case of any conflict(s), the more protective interpretation shall apply. Further, Seller has implemented and will maintain during the term of this Agreement appropriate security measures, procedures, and practices which meet or exceed the requirements set forth under the applicable law, including but not limited to, the CCPA.
- 7.3. Communications Consent. Nothing contained herein shall restrict or limit Newegg's ability to make editorial statements, publish product reviews, or to fairly report on issues regarding Seller or

the Products on any other website owned or operated by Newegg, its subsidiaries and affiliates. In particular, but without limitation, Newegg may rate or allow Customers to rate Seller's performance or Seller's Products, and Newegg may make these ratings publicly available. Irrespective of any other privacy policy or terms of use appearing on the Website, Newegg (and any affiliated with it), may communicate with Seller in connection with this Agreement, and any listings, sales, and transactions. Seller consents to such communications regardless of any customer communication preferences (or similar preferences or requests) Seller may have indicated on the Website or by other means. Personally identifiable information about Seller, including Seller feedback and/or e-mail and contact information may be displayed on the Website as information for Customers.

8. Warranties

- 8.1. Seller. Seller hereby represents and warrants to Newegg that:
 - 8.1.1. Seller has the power and authority to enter into this Agreement and to fully perform its obligations hereunder;
 - 8.1.2. Seller has obtained, and shall maintain in full force during the term of this Agreement, such federal, state and local authorizations as are necessary to operate and to otherwise perform its obligations under the Agreement, and will be in compliance with all applicable laws and regulations governing such performance;
 - 8.1.3. All pricing, availability and Product Information is accurate, truthful and not misleading or otherwise deceptive in any respect and will be updated by Seller on a regular basis and in a timely fashion.
 - 8.1.4. All Products are safe, in compliance with all applicable regulations, and are designed and manufactured without defects, safety, or other issues, and are not prohibited for sale. Seller acknowledges that Newegg neither has the opportunity nor duty/obligation to inspect, test, or otherwise monitor or oversee Products in any way.
 - 8.1.5. Seller has requisite authority to grant Newegg the right to use all Product Information (for example, pictures, drawings, graphics, descriptions, specifications and/or reviews).
 - 8.1.6. Seller will exercise its best efforts to ensure that the Seller Site and the content contained therein will not contain any material that is obscene, pornographic, profane, fraudulent, libelous or defamatory.
 - 8.1.7. The content and Products do not infringe or misappropriate any third party's patent, copyright, trademark, trade secret, or any other intellectual property right (collectively, "Intellectual Property Right");
 - 8.1.8. Products (**including Seller Products manufactured outside of Canada**) shall conform to all domestic and international legal requirements and shall not be in violation or cause Newegg to be in violation of any applicable law, rule or regulation (including without limitation, export and hazardous substance laws, regulations, rules and directives) and Seller shall obtain all permits, licenses, inspections and similar permissions required to comply with such laws, rules and regulations;
 - 8.1.9. Seller is not currently owned or controlled by a direct competitor of Newegg, nor employs any person who is also employed by, or is an officer, director, manager, or material shareholder, of a direct competitor of Newegg.

- 8.1.10. Seller acknowledges and will comply with all Newegg Marketplace Content Policies displayed on the Website, as such policies may be amended from time to time.
- 8.2. NEWEGG. Newegg hereby warrants that:
 - 8.2.1. Newegg has the power and authority to enter into this Agreement and to fully perform its obligations hereunder;
 - 8.2.2. Newegg has obtained, and shall maintain in full force during the term of this Agreement, such federal, state and local authorizations as are necessary to operate and to otherwise perform its obligations under the Agreement, and will be in compliance with all applicable laws and regulations governing such performance.
- 8.3. **No Warranties**. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY ACKNOWLEDGES AND AGREES THAT THE OTHER HAS NOT MADE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** In particular, but without limitation, Newegg makes no representation as to whether Seller is required to charge Sales Tax to Newegg or to a Customer in connection with sales of Products made through the Website, and in the event Seller subsequently is assessed sales tax (including any interest or penalties thereon) by an applicable tax jurisdiction in connection with such sales, Seller waives any right to demand payment or reimbursement of the same from Newegg.

9. Insurance

- 9.1 At its sole expense, Seller must procure and maintain general commercial and products liability insurance applicable to Seller Products, with at least an A.M. Best Rating of A-, X or higher, with minimum liability amounts stated below: General & Commercial Liability Insurance, Personal and Advertising Injury, and Errors & Omissions Insurance in amounts not less than \$1 million per occurrence and \$2 million in the aggregate. In addition, if Seller manufactures any Product it offers for sale on the Website, Seller shall also procure and maintain Product Liability and Product Recall insurance in amounts not less than \$1 million per occurrence and \$2 million in the aggregate. These insurance requirements do not limit Seller's liability to Newegg in the event insurance recoveries/proceeds are less than Seller's liability to any party. Upon any material change(s) in coverage, Seller must give at least thirty (30) days prior notice to Newegg.
- 9.2 Certificate of Insurance. Within ten (10) days of execution of this Agreement, Vendor shall provide a current Certificate of Insurance satisfactory to Newegg reflecting the types of coverage and limits required hereunder, and shall name Newegg Canada Inc. as an additional insured in the aforementioned policy. In addition, the Certificate of Insurance will indicate that Newegg will be given 30 days' written notice in the case of cancellation of the policy.

Named Insured: Newegg Commerce, Inc., and its subsidiaries
Attn: Risk Manager
c/o Newegg Canada Inc.

**17560 Rowland Street
City of Industry, CA 91748**

- 9.3. Newegg reserves the right, in its sole discretion, to at any time upon written notice to require a Seller to increase its levels of insurance coverage above those set forth in Section 9.1 above.

10. Term and Termination

- 10.1. Term. The term of this Agreement shall begin on the date Seller completes its application to list its Products for sale on the Website, and shall continue until terminated by Newegg or Seller as provided below.
- 10.2. Termination for Convenience. Either party may terminate this Agreement at any time, with or without cause, immediately upon providing written or email notice to the other party.
- 10.3. Retention of Seller funds. Seller acknowledges and agrees that, upon termination of this Agreement, Newegg shall have the right to retain any funds due to Seller for a period of up to ninety (90) days as a reserve against which to apply Customer returns, refunds, or other customer service-related credit.
- 10.4. Change of Ownership. Seller agrees to notify Newegg within twenty-four (24) hours of any change in ownership and the nature of the change, including the name of the new owner. If there is any such change in ownership, Newegg may, in its sole discretion, terminate this Agreement.

11. Intellectual Property License Grant

- Seller grants Newegg a non-exclusive, worldwide, royalty-free license to use, reproduce, distribute, create derivative works of (only as needed to create the look and feel of pages on the Website or as required to technically format materials provided by Seller), and publicly display the Seller Marks, (including the trademarks or service marks of any entity or individual whose product is submitted by Seller) Products, and Product Information on the Website.

12. Indemnification

- 12.1. Indemnity. Seller shall indemnify, defend and hold harmless Newegg, its affiliates, subsidiaries, related entities, and their officers, directors, employees, agents, successors and assigns from and against any claims demands, liabilities or losses, damages, and expenses (including reasonable attorneys' fees and costs) including but not limited to the following based upon:
 - 12.1.1. any product liability or similar claims arising or resulting from the use of any Product, including claims seeking damages for personal injury or property damage arising from or in relation to Products, and any claim concerning a Product's recall or otherwise defective or unsafe Product(s) (including design or manufacturing defects);
 - 12.1.2. any intentional misconduct or negligence by Seller or its employees or agents in performing its obligations under this Agreement;

- 12.1.3. any third party claim that a Product, or any part thereof, infringes or misappropriates any Intellectual Property Right of a third party;
- 12.1.4. the failure or alleged failure of Products to comply with Product specifications or with any express or implied warranties of Seller;
- 12.1.5. the violation or alleged violation of any law, statute or governmental ordinance or Visa, Mastercard, American Express, and Discover rule, regulation or pronouncement due or related to the manufacture, possession, shipment, labeling, packaging, use or sale of any Products;
- 12.1.6. any actual or alleged unfair business practices, false advertising, misrepresentation or fraud resulting from Product Information provided by Seller and disclosed by Newegg;
- 12.1.7. any breach or alleged breach of a Seller representation or warranty or any other provision of this Agreement by Seller;
- 12.1.8. any assessment of Sales Tax (including any interest and penalties thereon) made by an applicable tax jurisdiction against Newegg in connection with the sale of a Product pursuant to this Agreement.
- 12.2. Claims Handling. If a credible claim is made or threatened, for which Newegg is entitled to indemnification from Seller including without limitation the filing of a lawsuit against Newegg, or the receipt of a demand or notice by Newegg or Newegg elects to defend any claim for which Newegg is entitled to indemnification:
 - 12.2.1. Newegg shall have the right to engage counsel of its choosing that Newegg deems, in its sole discretion, to be necessary for a competent defense of the suit;
 - 12.2.2. Newegg shall pay all legal fees and expenses incurred in defense of the claim or suit as they become due. Seller shall reimburse Newegg for such fees and expenses within thirty (30) days from date of invoice or debit memo from Newegg. After thirty (30) days, Newegg will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Newegg to Seller. This shall not apply to any judgment or settlement amount, which amounts Newegg shall be entitled to notify, invoice or debit Seller's account at any time.
 - 12.2.3. In the event a claim is made or a suit is filed directly against Newegg, and Newegg is defending such claim or suit, then Newegg, in its sole discretion, may settle the claim or suit. If Seller is defending the claim or suit, Seller may not settle the claim or suit absent the written consent of Newegg unless such settlement (a) includes a release of all claims pending against Newegg, (b) contains no admission of liability or wrongdoing by Newegg, and (c) imposes no obligations upon Newegg other than an obligation to stop selling any infringing items. Newegg agrees to provide reasonable assistance to Seller, at Seller's expense, regarding such claim or action.
- 12.3. Notice. If a credible claim is made or threatened for which Newegg is entitled to indemnification from Seller, including without limitation the filing of a lawsuit against Newegg, or the receipt of a demand or notice by Newegg, or Newegg elects to defend any claim for which Newegg is entitled to indemnification Newegg will use reasonable efforts to notify Seller promptly of any such party claim for which Newegg believes Seller should indemnify and defend Newegg under this Section. However, Newegg's failure to provide such notice or delay in providing such notice will relieve Seller of its obligation only if and to the extent such delay or failure materially prejudices Seller's ability to defend such claim.

13. Limitation of Liability

- **EXCEPT FOR WILLFUL OR GROSSLY NEGLIGENT BREACHES OF ANY OBLIGATION UNDER THIS AGREEMENT, BREACHES OF ANY CONFIDENTIALITY OBLIGATIONS, THE FULFILLMENT OF ANY INDEMNITY OBLIGATIONS AND AS OTHERWISE PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL NEWEGG, OR ITS SUBSIDIARIES OR AFFILIATED ENTITIES, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL NEWEGG'S LIABILITY FOR ANY DAMAGES UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID TO NEWEGG UNDER THIS AGREEMENT. NEWEGG SHALL HAVE NO LIABILITY TO ANY PARTY FOR ANY INTERNET OR TELECOMMUNICATIONS FAILURE, COMPUTER VIRUS OR THIRD PARTY INTERFERENCE THAT MAY INTERRUPT OR DELAY ACCESS TO ANY INTERNET SITE OR CAUSE OTHER PROBLEMS OR LOSSES. NO PARTY SHALL BE LIABLE FOR ANY DELAY OR FAILURE TO FULFILL ITS OBLIGATIONS HEREUNDER THAT RESULTS FROM AN ACT BEYOND ITS REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO ACTS OF NATURE, WAR, CIVIL DISTURBANCE, TERRORISM, COURT ORDER, OR LEGISLATIVE OR REGULATORY ACTION.**

14. Miscellaneous

- 14.1. Applicable Law. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, exclusive of choice of law rules. Both parties agree to submit exclusively to the personal jurisdiction of the applicable federal or provincial courts of Ontario, Canada.
- 14.2. Attorneys' Fees. In the event of any litigation between the parties hereto, the losing party shall pay the prevailing party's cost and expenses in such litigation, including, without limitation, court costs, reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.
- 14.3. Assignment. Neither this Agreement, nor any rights granted hereunder, may be assigned by either party voluntarily or by operation of law without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Newegg may assign this Agreement and/or its rights hereunder without Seller's prior consent to any Affiliate of Newegg, in connection with corporate reorganization, or in connection with the sale of all or substantially all of Newegg's business or assets (whether by merger, sale of assets, sale of stock or otherwise) or to any financial institution that processes the purchase of Products on or through the Website. Any attempted assignment in violation of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, any successor or valid assign of either party.
- 14.4. Headings: Construction. The headings to the sections, sub-sections and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or affect the

meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement.

- 14.5. Non-Waiver. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full rights to require such performance at any time thereafter. The waiver by either party of a breach of any provisions hereof shall not be taken, construed, or held to be a waiver of the provision itself or a waiver of any breach thereafter or a waiver of any other provision hereof.
- 14.6. Notices. Unless otherwise specifically indicated elsewhere in this Agreement, any notice or communication permitted or required hereunder will be in writing and will be delivered by facsimile transmission with confirmation of receipt, in person, or by courier, or mailed by certified or registered mail, postage prepaid and addressed as set forth on the signature page of this Agreement or to such other facsimile number or address as either party may provide from time to time to the other. In addition, notices to Seller may be delivered by email to Seller at the most current email address provided by Seller to Newegg. If notice is given in person, by courier, by email or by facsimile, it will be effective upon receipt; and if notice is given by mail, it will be effective three (3) business days after deposit in the mail.
- 14.7. Relationship of the Parties. The parties hereto are independent contractors and nothing contained in this Agreement shall be deemed or construed to create the relationship of partnership or joint venture or principal and agent or of any association or relationship between the parties. Seller acknowledges that it does not have, and Seller shall not make any representation to any third party either directly or indirectly indicating that Seller has, in any way, authority to act for or on behalf of Newegg or to obligate Newegg in any way whatsoever. Each party is responsible for all taxes, duties and other governmental assessments incurred by it as a result of such party's performance under this Agreement, and Seller shall reimburse Newegg for any Sales Taxes, VAT, excise, Recycling Taxes or other tax, duties or levies (other than taxes on Newegg's income and taxes for which Seller is exempt), including any penalties and interest, which Newegg may be required to collect or remit to applicable tax authorities in connection with the sale of Seller's Products pursuant to this Agreement.
- 14.8. Severability. A judicial determination that any provision of this Agreement is invalid, in whole or in part, shall not affect the enforceability of those provisions unaffected by the finding of invalidity.
- 14.9. Survival. Notwithstanding the termination or expiration of the term of this Agreement or any renewal period thereof, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such expiration or earlier termination shall survive, including, without limiting the foregoing, the following provisions: 7, 12, 13, and 14.
- 14.10. Counterparts, Duplicate Originals. This Agreement may be executed in any number of counterparts or duplicate originals, all of which shall be considered one and the same agreement. Facsimile signatures on one or more counterparts of this Agreement shall be as effective as original signatures.
- 14.11. Entire Agreement and Modification. This Agreement, including any addenda attached hereto and fully incorporated herein, constitutes the entire agreement between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous written or oral

communications or agreements between the parties hereto respecting the subject matter hereof, including but not limited to any terms and conditions contained on any pre-printed forms, purchase orders, purchase order acknowledgement and invoice. Newegg may amend any of the terms or conditions contained in this Agreement at any time and solely at Newegg's discretion by posting a new version of the Agreement, containing the amendments, on the Seller Portal or the Website, and Seller is responsible for reviewing these locations and informing itself of applicable amendments. SELLER'S CONTINUED USE OF THE WEBSITE FOR MORETHAN SEVEN (7) CALENDAR DAYS AFTER NEWEGG'S POSTING OF ANYCHANGES WILL CONSTITUTE SELLER'S ACCEPTANCE OF SUCH CHANGES. IFSELLER DOES NOT AGREE TO ANY CHANGES TO THIS AGREEMENT, SELLER MUST TERMINATE THIS AGREEMENT AS PROVIDED ABOVE.

Newegg Inc.

Signature:

Signature:

Printed Name:

Printed Name:

Title:

Email Address:

Date:

Store Name (Seller ID):

Date: