



## SUPPLIER AGREEMENT

**THIS SUPPLIER AGREEMENT ("Agreement")** is made as of the Effective Date set forth below by and between Wayfair LLC, a Delaware limited liability company ("**Wayfair**"), with its principal office located at 4 Copley Place, Boston, MA 02116, and the supplier identified below ("**Supplier**"). This Agreement establishes the terms and conditions for the sale of Supplier's products ("**Merchandise**") to Wayfair, on websites owned or operated by Wayfair, on websites owned by other parties ("**Partners**") who by agreement allow Wayfair to sell products through such Partners' websites, and otherwise by Wayfair or its affiliates. Wayfair and Supplier are each sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**". This Agreement consists of this cover page (the "**Cover Page**") and the attached standard terms (the "**Standard Terms**"). The term of this Agreement commences on the Effective Date and ends upon termination pursuant to Section 12(a) of the Standard Terms.

### Supplier Information:

Supplier Name: ARK DESIGN INC

Supplier Address: 5142 N Academy Blvd, Unit 1040, Colorado Springs, CO, United States, 80918

State/Jurisdiction of Incorporation or Formation: CO

Supplier Contact Person: Fan Chen

Contact Telephone Number: 7198854565

Contact Fax Number: \_\_\_\_\_

Contact E-Mail: jisefrysef527@gmail.com

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and delivered by their proper and duly authorized representatives as of the Effective Date.

### WAYFAIR LLC

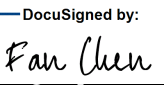
By:  24/05/2021

Name: Alex Duncan

Title: Associate Director

Effective Date: 1/1/2021

### SUPPLIER

DocuSigned by:  
By:  5/24/2021  
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Name: Fan Chen

Title: Vice President of Sales

[Standard Terms on Following Page]

## STANDARD TERMS

# 1. **Product Safety, Design, Warnings, and Disclaimers.**

(a) Supplier shall comply with, and ensure that all Merchandise complies with, all applicable laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions, and other requirements, including those related to product safety, testing, warnings, labeling, and certification, now or hereafter in effect, of any governmental authority of competent jurisdiction, including any jurisdiction into which the Merchandise is offered for sale (collectively, "**Applicable Laws**"). Supplier agrees that Wayfair may sell the Merchandise in the United States, its territories and possessions, and Canada, with such geographies subject to change by agreement of the Parties. If applicable to the Merchandise, Applicable Laws include all regulations promulgated by the California Air Resources Board, irrespective of whether the Merchandise is sold outside of the State of California. Supplier is subject to and will comply with Wayfair's Supplier Code of Conduct, which is available on Wayfair's Supplier Extranet. Supplier warrants and represents that all representations and descriptions made or provided by Supplier concerning the Merchandise are true and accurate.

(b) Supplier warrants that it regularly deals with goods of the kind sold by and to Wayfair and that the Merchandise does not infringe any copyright, trademark, patent, or other intellectual property rights of a third party. Supplier agrees that any documents, images, or other information concerning the design of Merchandise provided by Wayfair are not specifications as that term is used in U.C.C. §2-312(3) but are instead only suggestions that the Supplier is free to reject, that Wayfair relies on Supplier to review and approve any design, and that Supplier remains solely responsible and liable for the design of Merchandise.

(c) Supplier shall promptly notify Wayfair in writing of all warnings, disclaimers, or any other similar notices (including, without limitation, any specific formatting or style requirements for such warnings or disclaimers) required by Applicable Laws or Supplier's licensors to be posted with respect to Merchandise.

2. **Product Warranty.** Supplier warrants to Wayfair and any purchaser or end user of the Merchandise that the goods will be merchantable (as such term is defined in the UCC) and free from defects, latent or otherwise, in design, materials, and workmanship (the "**Product Warranty**"). The Product Warranty is in addition to all other warranties, express, implied, statutory, and common law and may not be limited or disclaimed by Supplier.

3. **Product Recalls.** Supplier is solely responsible for any public or private recall or other appropriate corrective action in respect of Merchandise ("**Product Recall**"), including all associated costs and expenses and liaison with regulatory authorities. Supplier shall promptly notify Wayfair of any Product Recall and shall provide Wayfair with all information reasonably requested in connection with any Product Recall. Supplier shall hold harmless, defend, and indemnify each Indemnified Party (as defined below) from and against any and all Losses (as defined below) incurred by an Indemnified Party arising out of or in any way relating to any Product Recall.

4. **Payments.** Wayfair will pay Supplier all undisputed invoiced amounts for Merchandise within sixty (60) days of Wayfair's receipt of invoice unless the Parties agree otherwise in writing. The Parties acknowledge and agree that: (i) Wayfair's monetary obligations to Supplier shall at all times be net of all indemnity, contribution, and other monetary

obligations owing by Supplier to Wayfair; and (ii) any installment payment or advance made by Wayfair to Supplier while Supplier has any outstanding obligations shall be deemed to be an overpayment to Supplier and shall be subject to recoupment and/or set-off by Wayfair. Wayfair shall have the right to deduct any amounts owed by Supplier from any amounts owed to Supplier by Wayfair and to pay only the net sum due, if any. Any remaining outstanding amounts due after recoupment and/or set-off by Wayfair shall be paid by Supplier promptly upon demand by Wayfair.

# 5. **Use of Marks and Content.**

(a) **Right to Use Marks.** Supplier grants to Wayfair, its affiliates, and Partners a non-exclusive, royalty-free right and license to use the trademarks associated with the Merchandise (the "**Marks**") in connection with any business, marketing, advertising, or promotional activities. Supplier warrants that it has the right to grant the foregoing right and license and that the Marks do not infringe the intellectual property rights of any third party.

(b) **Right to Use Content.** Supplier grants to Wayfair and its affiliates a non-exclusive, royalty-free right and license to create photographs and derivative works thereof, renders, and 3D models (collectively, "**Models**") of the content and images provided by Supplier to Wayfair ("**Content**") and the Merchandise. Supplier grants to Wayfair, its affiliates, and Partners a non-exclusive, royalty-free right and license to publish, use, reproduce, distribute, transmit, display, modify, and otherwise commercially exploit the Content and Models for business, marketing, advertising, and promotional activities. Supplier warrants that it has the right to grant the foregoing rights and licenses and that the Content and Merchandise do not infringe the intellectual property rights of any third party.

6. **Confidential Information.** "**Confidential Information**" means all nonpublic information disclosed by a Party to the other Party that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential. Confidential Information includes, but is not limited to: (i) all information and materials about any Wayfair customer in whatever format, including customer names, addresses, phone numbers, and email addresses (collectively, "**Customer Information**"), (ii) all information related to Merchandise sales, pricing, cost, inventory, operations, and other similar data, and (iii) the terms of this Agreement. Except as otherwise required by law, during the term of this Agreement and for a period of three (3) years following its termination, each Party shall (i) use the other Party's Confidential Information solely to perform its obligations or exercise its rights under this Agreement, and (ii) restrict disclosure of the other Party's Confidential Information to its personnel who need to know such information and who are subject to confidentiality obligations at least as restrictive as those set forth herein. Upon the termination of this Agreement, within ten (10) calendar days after receiving a Party's written request, the other Party shall, unless otherwise required by law, destroy, in such a manner that it cannot be retrieved, or return to the requesting Party (as instructed by such Party) any materials containing Confidential Information.

# 7. **Privacy, Data Protection, and Notification.**

(a) Supplier shall maintain Customer Information in strict compliance with all applicable privacy and data protection laws. Supplier shall treat all Customer Information as Confidential Information under this Agreement and not

disclose Customer Information to any third party. Supplier shall use Customer Information only in furtherance of its responsibilities under this Agreement, and Supplier shall implement appropriate technical and organizational measures to protect the Customer Information.

(b) Supplier shall notify Wayfair without undue delay upon becoming aware of any unauthorized access to or use of any Customer Information that compromises the security, confidentiality, or integrity of such information ("**Data Security Breach**"). Supplier shall cooperate with Wayfair to assist in the investigation, mitigation, and remediation of the Data Security Breach and provide Wayfair with sufficient information to allow Wayfair to meet any obligation to report or inform customers of the Data Security Breach under applicable privacy and data protection laws.

(c) Supplier will reimburse Wayfair for the reasonable expenses that Wayfair incurs as a result of a Data Security Breach.

8. **Indemnification.** Each Party (the "**Indemnifying Party**") shall hold harmless, defend, and indemnify the other Party (and Partners where Supplier is the Indemnifying Party), its affiliates and subsidiaries, and its and their present and former officers, directors, employees, agents, stockholders, representatives, successors, and assigns (each an "**Indemnified Party**") from and against any and all damages, injuries, liabilities, settlements, royalties, penalties, fines, costs, expenses (including, without limitation, fees and disbursements of counsel), and losses of every kind and nature whatsoever (collectively, "**Losses**") arising out of or in any way relating to any third party claim, demand, action, lawsuit, or proceeding (a "**Claim**"), even if such Claim may be false, fraudulent, or groundless, arising from or in connection with any breach of the Indemnifying Party's obligations, representations, or warranties under this Agreement, including, but not limited to, any Claim alleging infringement of an intellectual property right. Settlement of an indemnified Claim may not be made without the Indemnified Party's prior written consent to the terms of settlement, which consent shall not be unreasonably withheld or delayed. An Indemnified Party will have the right to participate in the defense of any such Claim at its own expense. If an Indemnified Party notifies the Indemnifying Party of a Claim ("**Claim Notice**"), the Indemnifying Party shall provide prompt assurance of its ability and intent to indemnify the Indemnified Party, to the Indemnified Party's reasonable satisfaction, and the Indemnifying Party shall commence to defend such Claim, at its sole cost and expense, within five days of said Claim Notice. If the Indemnifying Party fails to provide such assurance or commence such defense within such five-day period, in addition to the other rights and remedies available to the Indemnified Party at law or in equity, the Indemnified Party may, at its option, assume the defense or settlement of such Claim in its own name, and all recoveries from such Claim shall belong to the Indemnified Party, and all fees and costs (including reasonable attorneys' fees) in defending such Claim and all damages or settlement costs arising therefrom, shall be the Indemnifying Party's sole responsibility. Supplier shall hold harmless, defend, and indemnify Wayfair in accordance with the terms of this Section 8 from and against any Losses arising from or in any way relating to Claims based on the design or manufacture of the Merchandise, including,

but not limited to, product liability and intellectual property Claims.

9. **Insurance.** Supplier shall obtain and maintain, at its expense, commercial general, umbrella, and/or excess liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate covering liabilities caused by or occurring in connection with this Agreement and/or the offering or sale of the Merchandise from an insurer having a current A.M. Best rating of A+ or better. Supplier's general liability insurance policy shall include coverage for products liability. Supplier shall name Wayfair as an additional insured under its general, umbrella and excess insurance policies. All such policies shall provide that the coverage thereunder shall not be terminated without at least thirty (30) days' prior written notice to Wayfair. All such policies shall be primary and non-contributory. Upon Supplier's execution of this Agreement, Supplier shall deliver to Wayfair a certificate of insurance evidencing the insurance coverage required hereunder, and within ten (10) days after each anniversary of the Effective Date (and in any event within ten (10) days of Wayfair's request) Supplier shall deliver to Wayfair an updated certificate of insurance evidencing such coverage.

10. **Limitation of Liability.** EXCEPT IN CONNECTION WITH: (1) A PARTY'S OBLIGATIONS UNDER SECTION 8 ("**INDEMNIFICATION**"), (2) A PARTY'S OBLIGATIONS UNDER SECTION 6 ("**CONFIDENTIAL INFORMATION**"), (3) SUPPLIER'S OBLIGATIONS UNDER SECTION 7 ("**PRIVACY, DATA PROTECTION, AND NOTIFICATION**"), OR (4) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, OR SPECIAL DAMAGES ARISING OUT OF PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY PROVISION OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

11. **Verification/Audit.** At Wayfair's written request, Supplier shall certify its compliance under any Applicable Laws, this Agreement or Wayfair's Supplier Code of Conduct, and Supplier will permit Wayfair to audit and verify such compliance. Supplier will promptly respond to any such request from Wayfair for certification or audit, and shall furnish any testing, labelling, import, or Merchandise documentation upon Wayfair's request. Supplier grants Wayfair access to any past, present, or future testing documentation concerning the Merchandise, and Supplier authorizes any third-party testing facility to disclose and transmit any existing or future report to Wayfair concerning the Merchandise.

12. **Miscellaneous.**

(a) **Termination/Cancellation.** Either Party shall have the right to terminate this Agreement upon at least sixty (60) days' prior written notice. Either Party shall have the right to immediately terminate this Agreement if the other Party is in breach of this Agreement and such breach is not cured by the breaching Party within ten business days of its receipt of written notice of the breach.

(b) **Notice.** Any notices or other communications required or permitted under this Agreement shall be sufficiently given if delivered personally or sent to a Party's address as set forth on the Cover Page (or to such other address of which a Party may have given notice) by first class mail. Such notices or other communications shall be deemed

received on the date delivered if delivered personally, or three business days after being sent if sent by first class mail.

(c) **Severability.** If any of the provisions of this Agreement are found to be invalid for any reason, the remainder will not be affected and shall continue in full force and effect in accordance with its terms.

(d) **Waivers/Amendment.** No waiver, amendment or modification of any provision of this Agreement will be valid unless it is in writing and executed by a duly authorized representative of each Party. The failure by either Party to insist upon strict performance of any provision will not be construed as a waiver or relinquishment of the right to insist upon strict performance of the same provision at any other time or any other provision of this Agreement.

(e) **Governing Law and Jurisdiction.** This Agreement is governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law provisions. The courts sitting in Suffolk County, Massachusetts shall have exclusive jurisdiction over any controversy relating to or arising out of this Agreement. Each Party irrevocably waives any objections to venue in such courts. The Parties' rights and obligations under this Agreement are not governed by the United Nations Convention on Contracts for the International Sale of Goods.

(f) **Headings.** The headings are for convenience only and shall not define, limit or construe the contents of such sections.

(g) **Survival.** Sections 1, 2, 3, 5 (with respect to Models), 6, 7, 8, 10, 11, and 12 shall survive the termination of this Agreement, as shall any terms that by their nature should reasonably be expected to so survive.

(h) **Counterparts.** The Parties may sign this Agreement in counterparts. Each signed counterpart will be an original, all of which will constitute one and the same agreement.

(i) **Pronouns.** All words used in this Agreement, regardless of the number or gender in which they are used, will be construed to include any other number, singular or plural, in any other gender, masculine, feminine or neuter, as the context of this Agreement may require.

(j) **Cumulative Remedies.** Any and all remedies available to the Parties in the event of a breach of this Agreement by the other Party will be cumulative. The exercise of any particular remedy will not be exclusive to the ability to seek other remedies for any breach of this Agreement.

(k) **Drafting.** This Agreement is the result of arm's length negotiations between the Parties and shall be construed to have been drafted by both Parties such that any ambiguities in this Agreement shall not be construed against either Party.

(l) **Entire Agreement.** This Agreement is the entire agreement and understanding between the Parties, and supersedes all prior agreements, proposals, representations and commitments, verbal or written, with respect to its subject matter. No additional terms or modification to this Agreement proposed by Supplier in any acknowledgment, invoice, or any other document shall be binding on Wayfair unless expressly agreed to in writing by a duly authorized representative of Wayfair.