

Exhibit "A"
Cyan Design
Terms and Conditions of Sale

The following are the terms and conditions applicable to all sales contracts unless specified in writing by Cyan Design (hereafter referred to as the "Company").

- [1] **Prices-** Buyer agrees to pay Company's established prices in effect on date of shipment if shipment is from other persons or firms, or on date of delivery if delivered from Company's stock. Prices are F.O.B. shipping point. Where transportation charges are expressly included, the same are based on present rates, and are subject to adjustment for any increase or decrease in effect at time of shipment. Any direct tax, including sales or use tax, imposed by law with respect to the sale or manufacture of any merchandise sold is to be added.
- [2] **Terms-** All invoices are due and payable on a net 30-day basis from invoice date unless otherwise stated on the invoice. All past due invoices arising hereunder or otherwise owing to Company by Buyer shall bear interest at the maximum rate per annum provided by law, but in no event any rate in excess of that permitted by law.
- [3] **Credit-** All sales are subject to approval by the credit department of Company. If the credit rating of Buyer becomes unsatisfactory in the opinion of the credit department of Company prior to delivery of the merchandise covered by any order, the sale may be cancelled by Company. If Buyer fails to fulfill any terms of the purchase agreed upon in connection with this or any other order, Company may defer delivery until compliance therewith is made, or at its option may cancel any sale. For credit approval of new accounts, the Company uses the services of Dun & Bradstreet and other credit reporting companies for credit analysis. We report delinquent accounts to those companies. We fill orders only after credit approval. Orders for past due accounts are not shipped until the account status is current.
- [4] **Delivery-** Company shall not be responsible for any delay or failure to make delivery which is occasioned by causes beyond its control, including but not restricted to fires, floods, strikes, labor disputes, accidents, embargoes, delays in transportation, fuel, material or labor shortages, failure to obtain delivery from manufacturers or subcontractors, any ruling, regulation or law of any government bureau or agency, or by any Act of God. Delays so caused shall not release Buyer from his obligation to accept and pay for goods. Company's responsibility ceases upon delivery of the merchandise to the carrier.
- [5] **Shipping Point For All Purposes-** All shipments are FOB Company's warehouse, in Fort Worth, Tarrant County, Texas.
- [6] **Shipping Method and Charges-** Company ships via the least expensive, not necessarily the fastest, carriers. If Buyer has a preferred carrier, we welcome the information and will ship via that carrier. For basic ground transportation services, the Buyer may be asked to pay a premium for custom selected carriers. Buyers are required to pay the entire Freight Services charge for any shipments using expedited ground transport or air transport services. For orders of \$500 or more: Freight charges for standard LTL commercial delivery or parcel delivery will be equal to 15% of the total order amount. If any items are backordered, they will also be billed at a 15% freight rate when they ship. For orders of less than \$500: Freight charges for standard LTL commercial delivery or parcel delivery will be equal to 30% of the total order amount, subject to a \$10 minimum freight charge. If any items are backordered, they will also be billed at a 30% freight rate when they ship, subject to a \$10 minimum freight charge. Company contracts with LTL freight carriers for standard commercial delivery only. Residential deliveries or accessorial services from LTL carriers will incur additional charges. Parcel shipments (such as UPS) will not incur additional freight charges for residential delivery or accessorial services.
- [7] **Shortage Claims-** Any claim for shortage must be made to Company within 3 days of delivery.
- [8] **Freight Claims-** We assure that products are in good condition prior to packing and shipping. Company is not responsible for shipments after they leave our warehouse. The carrier signs for acceptance at that time. Buyers must examine all arriving shipments for evidence of damage or breakage, and must refuse acceptance or file a claim with the carrier for compensation. UNDER NO CIRCUMSTANCES SHALL CYAN DESIGN BE RESPONSIBLE FOR DAMAGE IN U.P.S./FED EX SHIPMENTS.
- [9] **Returned Goods-**
Merchandise Returned for Credit- Must be accompanied by a returned merchandise authorization (RMA) number issued by Company within 30 days of our invoice date. Merchandise must be returned, freight prepaid, in its original factory sealed packaging and is subject to a 25% restocking fee. Discontinued, non-standard or unsaleable merchandise will not be accepted as returned goods for credit.
Merchandise Returned Under Warranty for Credit- Must be accompanied by a return merchandise authorization (RMA) number issued by Company within the warranty period. Merchandise must be returned, freight prepaid, in its original factory packaging. Merchandise that has been modified, or is missing parts, or that is not in its original packaging will be repaired and returned freight prepaid (if the warranty claim is approved). If merchandise cannot be repaired, credit will be issued at the invoiced value, less the value of any missing parts.
- [10] **Cancellation by Buyer-** No merchandise may be returned for credit or replacement except with written approval by Company. Orders placed with and accepted by Company may not be cancelled except with Company's written consent.
- [11] **Drop Shipments-** Company reserves the right to refuse drop shipment or pick-up orders that are bound for destinations outside the Buyer's regular or assigned selling or service area. Drop shipments may be subject to additional charges and freight charges are a percentage of total order value and applied to the shipment order value at time of shipment.
- [12] **Limited Warranty-** Company warrants that our products are free of defects in workmanship and materials. **SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Company will, at our sole option, repair or replace, FOB shipping point, freight prepaid within the Continental U.S., any of our products defective in workmanship or materials. Such repair or replacement is the sole and exclusive remedy against Company and is limited to thirty (30) days from the date of our invoice, except electrical lighting products which are warranted for one year from the date of invoice to the original purchaser. Company does not warrant any product which we promote and sell as "discontinued" nor any product which has been altered or repaired outside of our factory nor any product which, in our opinion, has been subject to abuse, misuse, negligence, accident or improper installation, maintenance or storage. **COMPANY WILL NOT BE RESPONSIBLE FOR ANY COSTS INCURRED IN THE REMOVAL OR REINSTALLATION OF ANY PRODUCT NOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH PRODUCT USE OR PERFORMANCE OR ANY BREACH OF AFOREMENTIONED WARRANTIES.**
- [13] **Place of Payment and Applicable Law-** Buyer agrees to pay all sums which may become due under this order or which he may otherwise owe to Company at the principal office of Company in Fort Worth, Tarrant County, Texas. This agreement shall be governed by and construed in accordance with the laws of the State of Texas. Buyer hereby agrees and consents to the jurisdiction of the Courts of the State of Texas and further consents to the exclusive and mandatory venue in Tarrant County, Texas, for any dispute arising between the Company and Buyer. Buyer shall be liable for and agrees to pay all reasonable expenses of litigation, including attorney's fees and court costs, incurred by Company in enforcing or collecting any debts, obligations, or liabilities of Buyer or any rights or remedies of Company under this agreement.
- [14] **Forbearance/No Waiver-** Forbearance or failure of Company to enforce any of these conditions or to exercise any right accruing from any default of Buyer shall not affect or impair Company's rights should such default continue or in case of any subsequent default of Buyer, nor shall such forbearance or failure be deemed a waiver of Company's rights in case of other or future defaults of Buyer.
- [15] **Security Interest-** Buyer grants Company a security interest in all goods purchased from Company, the exact description of which goods is found in each invoice presented to Buyer. Buyer appoints Company, as Buyer's attorney-in-fact for purposes of signing and filing with appropriate authority a Financing Statement (UCC-1) or any modification or extension thereof.

(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 indemnify Wayfair in accordance with the term of this Section 7 against any Losses incurred through Claims based on the manufacture of the Merchandise including, but not limited to, product liability.

8. **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 \$5,000,000 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 shall name Wayfair as an additional insured under its 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.

9. **Limitation of Liability.** EXCEPT IN CONNECTION WITH: (1) A PARTY'S INDEMNITY OBLIGATIONS HEREIN, (2) A BREACH OF THE CONFIDENTIALITY OBLIGATIONS CONTAINED IN SECTION 6, OR (3) 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. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS, A PARTY'S BREACH OF CONFIDENTIALITY, AND A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE MAXIMUM AGGREGATE LIABILITY OF A PARTY UNDER ANY THEORY, INCLUDING CONTRACT, NEGLIGENCE, OR STRICT LIABILITY, WILL NOT EXCEED ITS DIRECT DAMAGES.

10. **Miscellaneous.**

(a) **Termination/Cancellation.** Either Party shall have the right to terminate this Agreement upon at least sixty (60) days prior written notice. A Party shall have the right to immediately cancel or terminate this Agreement if the other Party is in breach of this Agreement and such breach cannot be cured by the other Party within 10 business days of its receipt of written notice of the breach.

(b) **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.

(c) **Waivers/Amendment.** No waiver, amendment or modification of any provision of this Agreement will be valid unless it is in writing and executed by the duly authorized representatives of the Parties. 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.

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

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

(f) **Continuing Obligations.** All obligations of the Parties which expressly or by their nature survived the expiration or termination of this Agreement will continue in full force and effect subsequent to and regardless of the expiration or termination of this Agreement and until they are satisfied or by their nature expire.

(g) **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.

(h) **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.

(i) **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.

(j) **Entire Agreement.** This Agreement, including the Cover Page, Standard Terms and any Exhibits, is the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior agreements, proposals, representations and commitments, oral or otherwise. 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.

Exhibit "A" is Supplier's standard Terms and Conditions of Sale and they are incorporated in this Agreement. Exhibit "A" shall control if there is any conflict in any one or more of the Terms and Conditions between Wayfair's Supplier Agreement and the Supplier's Terms and Conditions of Sale. Exhibit "A" shall govern and apply to any rights and duties between Wayfair and Supplier.