

## 1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to them hereunder:

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|-----|----------------------------|---|
| 1.1 | "cash sales"               | shall mean in relation to the Products, the sale of any product whereby payment is tendered and accepted by way of cash;  |
| 1.2 | "effective date"           | shall mean the date of signature hereof;  |
| 1.3 | "list price"               | shall mean the price of the Products set out in the price list published by Cardco from time to time;   |
| 1.4 | "net retail selling price" | shall mean the price at which a product is actually sold exclusive of VAT and less any credit card and/or other commissions given or paid or payable in respect of such sale, |
| 1.5 | "the Products"             | shall mean the Products listed on the face of this Agreement together with such other products as might be supplied from time to time;  |

## INTERPRETATION

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| 1.6  | words importing natural persons shall include a reference to bodies corporate and other legal personae and <i>vice versa</i> ;  |
| 1.7  | words importing the masculine shall include a reference to the feminine and other genders;  |
| 1.8  | words importing the singular shall include a reference to the plural and <i>vice versa</i> ;  |
| 1.9  | annexes to this Agreement shall be deemed to have been incorporated herein and shall form an integral part hereof;  |
| 1.10 | a reference to a party in a document includes that party's successors and permitted assigns;  |
| 1.11 | any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;   |
| 1.12 | where the day on or by which anything is to be done is not a business day, it shall be done on or by the first business day thereafter;   |
| 1.13 | when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case, the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday;  |
| 1.14 | a reference to a document includes an amendment or supplement to, or replacement or novation of that document;  |
| 1.15 | the captions appearing in this Agreement are for reference purposes only and shall not affect the interpretation hereof;  |
| 1.16 | if any provision is a definition (or under this heading " <i>Interpretation</i> " and/or any other heading in this Agreement) and is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition (or such other clause) effect shall be given to it as if it were a substantive provision in the body of the agreement; |
| 1.17 | where figures are referred to in numerals and words, if there is any conflict between the two, the words shall prevail.   |

## 2 INTRODUCTION

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|-----|---|
| 2.1 | Cardco conducts business, <i>inter alia</i> , as a distributor and wholesaler of greeting cards and related products. |
| 2.2 | The Consignee is, <i>inter alia</i> , a reseller / retailer of the Products.  |

- 2.3 Cardco wishes to supply the Products to the Consignee for resale to the general public on the basis that:
- 2.3.1 the Consignee will at all times be acting as an agent and not as a principal;
- 2.3.2 ownership in and to the Products will at all times (until the sale thereof to the public and payment by the Consignee to Cardco) remain vested in Cardco;
- 2.3.3 payment of the purchase price in respect of any sales of the Products shall be made (except for cash sales paid directly to the Cardco Rep) directly to Cardco;
- 2.3.4 the risk in and to the Products shall pass to the Consignee so soon as they are placed in possession of the Products.
- 2.4 The purpose of this Agreement is to record the prospective rights and obligations of the parties *inter se*.

### **3 APPOINTMENT**

Cardco hereby appoints the Consignee as a non-exclusive reseller to sell the Products and the Consignee hereby accepts such appointment.

### **4 DURATION**

This Agreement shall commence on the effective date and shall endure for a period of 12 months thereafter either party can terminate this Agreement upon giving to the other party thirty (30) days written notice to that effect. If such notice is not given within 30 days of the expiration date, this agreement is automatically renewed for a further period of 12 months. All notices must be emailed to [info@cardco.co.za](mailto:info@cardco.co.za).

### **5 OWNERSHIP**

- 5.1 Ownership in and to the Products including ownership in and to all intellectual proprietary rights relating to the Products shall at all times, before, during and after the termination of this Agreement and until they are sold to a customer, remain vested in Cardco or its assignee.
- 5.2 The display will be solely used for Cardco Products and that the displays/racks will remain the property of CardCo.

### **6 ORDERING AND SUPPLY OF PRODUCTS**

- 6.1 The Consignee will at all times maintain a floating stock quantity of Cardco Products and maintain the displays supplied by Cardco fully stocked at all times.
- 6.2 Selected stock will be provided on consignment with no obligation on the retailer to purchase the products. The decision of which stock will be provided on a consignment basis lies solely with Cardco and not the Consignee.
- 6.3 The Consignee can order stock from Cardco either directly from a Cardco Rep or by emailing the order to [info@cardco.co.za](mailto:info@cardco.co.za)

### **7 MANNER OF SALES**

- 7.1 Notwithstanding the fact that sales will be conducted from the Consignee's premises, the Consignee shall at all times be acting as the reseller of Cardco in entering into such sale.
- 7.2 The owner/manager agrees to sell the products at the agreed retail prices indicated on the front of this agreement and agrees to pay for the stock sold at each visit or within agreed period of time.
- 7.3 The stock will be regularly maintained and merchandised by Cardco. The owner/manager takes full responsibility for all stock and displays delivered accepting that there will be a charge for stock and stands damaged on the premises.
- 7.4 Cardco representatives shall have the right to, at all reasonable times during the Consignee's business hours, visit the Consignee at least once a month to merchandise, invoice and restock the display to the quantities outlined in the front of this agreement.

7.5 Restocking invoices cannot be reduced to less than what had been sold from the last restocking date. It is agreed that the stock levels and amounts invoiced are not dependent upon clients' daily, weekly or monthly budgets but shall be based purely on the total value of the stock sold.

## **8 STOCK**

8.1 The risk in and to any product shall pass to the Consignee upon delivery to the premises of the Consignee and shall remain with the Consignee until fully paid to Cardco.

8.2 Cardco shall have the right to, at all reasonable times during the Consignee's business hours, send a representative to the Consignee's shop to conduct a physical stock take. A representative of each of Cardco and the Consignee will conduct a physical stock count of the Products situated in the Consignee's shop and on Cardco displays. In the event of any deficiency in the stock present, the Consignee will immediately be invoiced with the list price of such missing stock and shall pay the amount of such invoice to Cardco immediately unless otherwise agreed. Any dispute arising out of the stock count or valuation of the missing stock shall be resolved in the manner set forth in clause 12 below.

8.3 The Consignee hereby undertakes to afford the representative of Cardco full access to its premises and, in particular, Cardco displays and stock in order to conduct the stock count and to furnish such representative with its full co-operation.

8.4 The Consignee shall at all times keep Cardco's displays and stock in the agreed position at the Consignee's premises.

8.5 If Cardco shall so require, the Consignee shall, at its own cost, insure the Products against loss by fire, theft, damage or otherwise. The Consignee shall furnish Cardco with written proof of payment by the Consignee of the premiums in respect of such insurance. If it shall transpire that the Consignee shall have failed to pay any premium, then Cardco shall be entitled, but not obliged, to itself effect payment of such premium and recover the amount thereof from the Consignee upon demand. The Consignee shall notify the relevant insurance company of Cardco's interest in and to the Products.

## **9 PAYMENT**

Notwithstanding anything to the contrary contained in this Agreement, the monies due to Cardco shall become payable upon sale of any of the Products and shall be paid by the Consignee on presentation by Cardco of its invoice, save and unless otherwise agreed to the contrary in writing.

## **10 RIGHTS AND OBLIGATIONS OF THE CONSIGNEE**

Without derogating from any other obligation imposed in terms of this Agreement, the Consignee shall:

- 10.1 actively promote the sale of the Products;
- 10.2 notify Cardco promptly of any complaint or claim made or brought against the Consignee in respect of the Products;
- 10.3 make no representations regarding the Products other than those made by product descriptions or which Cardco shall have authorised the Consignee in writing so to make;
- 10.4 not pledge or purport to pledge the credit of Cardco;
- 10.5 not make or give any warranties to any of its customers in relation to the Products of Cardco may authorise the Consignee in writing to make from time to time;
- 10.6 when requested by Cardco so to do, include certain of the Products in its advertising from time to time;
- 10.7 not hold itself out to be a partner or exclusive agent of Cardco.

## **11 RELATIONSHIP OF PARTIES**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership between the parties hereto or constitute the Consignee as an agent or representative of Cardco for any purpose not recorded herein.

## 12 CONSEQUENCES OF TERMINATION

If this Agreement shall be terminated for any reason whatsoever, then upon termination:

- 12.1 Cardco shall retake possession of all of the Products then in the possession of the Consignee and the Consignee hereby consents to Cardco having access to its premises for this purpose;
- 12.2 A physical stock count shall be prepared on the basis set out in 8.2 above. If such count shall reveal any stock shortages, then the Consignee shall be invoiced for such shortages, *mutatis mutandis*, in the manner set forth in 8.2 above;
- 12.3 The Consignee shall forthwith cease to advertise and/or in any other manner promote the sale of the Products.
- 12.4 This agreement can be terminated by Cardco without notice if the monthly sales of the products are below the minimum acceptable level set by Cardco.
- 12.5 Cardco retains the right to remove all point of sale displays and stock belonging to Cardco, should outstanding payments due not be settled in full immediately.

## 13 BREACH

- 13.1 Should any party breach any of its obligations in terms hereof and persist in such breach for a period of 7 (seven) days after written notice will have been given to it by the other party, then subject to clause 16, the aggrieved party shall be entitled without prejudice to any rights which it may have in terms hereof or at law, to:
  - 13.1.1 an order for specific performance and damages; or
  - 13.1.2 cancel this Agreement and claim damages.
- 13.2 Any amount falling due for payment by any party in terms of this Agreement and remaining unpaid after due date, shall bear interest thereon, at the rate indicated on Cardco invoices and reckoned between the due date for payment thereof and the actual date of payment thereof, both dates inclusive.
- 13.3 The Consignee shall pay all legal costs, including attorney and own client costs, tracing agents fees and collection charges, which Cardco may incur, in taking any steps pursuant to any breach of these terms and conditions by the Consignee.

## 14 ADDRESSES AND NOTICES

- 14.1 For the purpose of this Agreement, including the giving of notices in terms hereof and the serving of legal process, the parties choose *domicilium citandi et executandi* ("*domicilium*") as follows:
  - 14.1.1 Cardco at: the addresses on the front page of this Agreement
  - 14.1.2 the Consignee at: the addresses on the front page of this Agreement
- 14.2 A party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* is in the Republic of South Africa and consists of, or includes, a physical address at which process can be served.
- 14.3 Any notice given in connection with this Agreement may be delivered by hand or be sent by prepaid registered post or be sent by telefax if the *domicilium* includes a telefax number, to the *domicilium* chosen by the party concerned. Any notice or process delivered on any party in connection with any matter or subject arising out of this Agreement or any notice shall be deemed to have been delivered if handed to any responsible person at the *domicilium* chosen by any party and it shall not be necessary to hand such process or notice to any party personally.
- 14.4 A notice given as set out above shall be presumed to have been duly delivered:
  - 14.4.1 on the date of delivery if delivered by hand or telefax;
  - 14.4.2 on the fourth day from the date of posting including the date of posting if posted by pre-paid registered post from within the Republic of South Africa; and
  - 14.4.3 on the fourteenth day from the date of posting including the date of posting if posted from outside the Republic of South Africa.

**15 ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties express or implied not contained in this Agreement shall be binding on the parties.

**16 VARIATION AND CANCELLATION**

No agreement varying, adding to, deleting from or cancelling this Agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties. It is recorded that there exists no collateral and/or other agreements and that this is the sole agreement entered into by and between the parties.

**17 INDULGENCES**

No indulgence granted by a party shall constitute a waiver of any of that party's rights under this Agreement; accordingly, that party shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

**18 TRANSFER OF AGREEMENT**

Should the shop be taken over by a new owner this agreement automatically transfers to the new party. Cardco will hold the new party liable for any outstanding amounts on the account should they (Cardco) not receive notification of this change (30 days) prior.

THUS DONE AND SIGNED BY THE RESPECTIVE PARTIES ON THE FRONT PAGE OF THIS AGREEMENT:

**who, by appending their signature above, bind myself in my personal capacity as surety for and co-principal debtor in *solidum* with the Consignee in favour of Cardco for the due performance of any obligation of the Consignee and for the payment to Cardco by the Consignee of any amounts which may now or at any time be or become owing to Cardco by the Consignee from whatsoever cause arising and including, but not limited to any claims for damages and actions against the Consignee.**