

## **BUYER AGREEMENT**

THIS BUYER AGREEMENT (hereinafter "Agreement") is made on the day this Agreement was confirmed online between GENCO Marketplace, Inc. its affiliates, assigns and successors as the case may be (hereinafter referred to collectively as "GMP") located at 700 Cranberry Woods Drive, Cranberry Township, PA 16066 ; and the registrant completing the online Agreement (hereinafter "BUYER") with its principal place of business located at the address submitted in the online registration, and for the consideration set forth below, including the opportunity to purchase merchandise from GMP ("PRODUCT"), and intending to be legally bound, GMP and BUYER hereby agree as follows:

1. This Agreement applies to all transactions between GMP and BUYER. From time to time, GMP may modify or amend this Agreement in its sole discretion. If GMP modifies or amends such agreement, GMP shall provide notice to BUYER at BUYER's e-mail address. Entering into any transaction shall indicate BUYER's acknowledgment of the terms and conditions existing at the time of the transaction and BUYER's agreement to such terms and conditions. IT IS THE RESPONSIBILITY OF THE BUYER TO REVIEW THE TERMS AND CONDITIONS FROM TIME TO TIME SO THAT THE BUYER IS AWARE OF CHANGES, IF ANY, THAT HAVE BEEN MADE.

2. "Supplier" shall include any company for which GMP distributes.

3. THE SERVICES, GOODS AND THE WEBSITE, INCLUDING ALL PROPERTY LISTED FOR SALE, CONTENT, FUNCTIONS, MATERIALS, SERVICES AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SERVICES OR THE WEBSITE, ARE PROVIDED ON AN "AS IS," "WHERE IS," "AS AVAILABLE" BASIS "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER AGREES THAT THERE ARE NO WRITTEN WARRANTIES OR ANY WARRANTIES THAT EXTEND BEYOND THE FACE OF THIS DOCUMENT. GMP and the Supplier and their respective parent and affiliate companies and entities undertake no responsibility for the quality of the goods and assume no responsibility that the goods will be fit for the purpose for which you are buying these goods. BUYER acknowledges that no representations have been made by the Supplier or GMP, or relied upon by BUYER, in connection with the quality, quantity or capacity of the merchandise. BUYER acknowledges and understands that purchase of PRODUCT constitutes the wholesale purchase of clearance merchandise and that some or all of the PRODUCT may not be in usable condition. The BUYER further understands that the merchandise may vary from the general description and that the general description is for convenience only. BUYER agrees that the general description is NOT a representation or acknowledgement of the actual goods.

4. GMP will hereby sell, assign, and transfer to the BUYER the PRODUCT as described in each executed Notification of Sale Memo, which shall be deemed incorporated

herein. GMP warrants good title and ownership of the PRODUCT listed on the Notification of Sale Memo.

5. BUYER shall pay GMP by wire transfer or payment method otherwise available on [www.gencommarketplace.com](http://www.gencommarketplace.com). Credit cards will be accepted online up to the limit of US \$6,000.00 per BUYER per day.

6. BUYER shall be solely responsible for and shall pay the costs of any and all transportation of PRODUCT regardless of whether transportation is required for purchase or return. This includes any and all shipping and special handling costs whether foreseen or unforeseen. BUYER acknowledges and agrees to transport all PRODUCT at its OWN RISK and that GMP is not liable for any damage occurring in transportation.

7. The BUYER hereby certifies that NO purchase or dealings between the parties are for BUYER's personal, family or household use or purpose. Any bid submitted by BUYER is exclusively in BUYER's commercial business use and resale and is not subject to the collection of sales tax as part of BUYER's purchase of inventory for its/his/her business.

8. BUYER shall be responsible for all taxes, tariffs, duties and applicable expenses based on any sales transactions occurring under this Agreement. Sales taxes shall be added to the purchase price unless a copy of the purchaser's sales tax exemption is provided to GMP.

9. Title and risk of loss to any PRODUCT pass to the BUYER upon GMP'S tender of PRODUCT to BUYER or its chosen carrier at GMP's warehouse.

10. PRODUCT may not be offered for resale by BUYER within a 50 mile radius of Supplier's retail locations (within and outside of North America), through catalogs or on the internet, or in violation of paragraphs 10, 11 or 12. Additionally, private brands PRODUCTS of certain Suppliers are prohibited from sale or resale anywhere in the United States, as further specified in Section 11 hereinbelow. BUYER acknowledges that any violation of these resale restrictions may subject GMP to penalties by the Supplier or \$1000 per occurrence, whichever is greater. BUYER agrees to comply with such resale restrictions and shall be responsible to ensure that any secondary purchasers comply with those restrictions. As further provided herein, BUYER agrees to indemnify and hold harmless GMP for any penalties and fees incurred as a result of BUYER's unauthorized resale.

11. BUYER agrees to remove and obliterate (a) any and all references to GMP, the Supplier or the Supplier's private brand names including, without limitation, tags, interior or exterior labels, size strips, bar codes, pocket flashers and warranty cards from the PRODUCT; (b) any and all references to GMP, the Supplier or the Supplier's private brand names from any consumer packaging associated with the PRODUCT, and (c) to deface, detag and/or delabel any references to GMP, the Supplier or the Supplier's private brands that are permanently embedded, scribed or painted on any item contained in the PRODUCT in a manner that renders them unreadable. GMP shall provide BUYER with a list of the Supplier's private brands for each Salvage transaction (the "Private Brands Notification"). For certain Suppliers, their private brands PRODUCTS may not be sold or resold anywhere in the United States, either by delivery or through online sales or by any other form of sales or distribution in the United States and

accordingly must be sold or resold only by export from the United States. Such exclusion and prohibition of the sale or resale of a Supplier's private brands PRODUCTS in the United States shall be specified on the Private Brands Notification. BUYER is hereby notified that the private brands PRODUCTS of Kohl's Inc. are subject to such prohibition of sale or resale anywhere in the United States and thereby must be exported for sale or resale.

12. BUYER shall not advertise the PRODUCT using the name of the Supplier or its private brand names, or include the same within the BUYER

store(s)/internet/newspaper/magazine or any source of media. BUYER shall not use any symbol or abbreviation when advertising that would represent the Supplier or Supplier's private brand names. Nothing in this Agreement shall be construed to grant any right or license to BUYER. BUYER shall not inform its customers that any PRODUCT may be returned to a retail store of the Supplier.

13. BUYER agrees that no publications of the Supplier or other materials referencing the Supplier or any of its affiliated or related companies will be made available in any manner to BUYER's customers.

14. BUYER may sell PRODUCT to unrelated third-party entities provided (a) BUYER has complied with the obligations of this Agreement including the obligations set forth in paragraphs 9, 10, 11 and 12; and (b) such third party has signed a written agreement with BUYER wherein such third party has agreed to be bound by the terms and obligations at least as strict as those set forth in this Agreement, and with the indemnity obligations and disclaimers inuring to the benefit of GMP, its Suppliers and any entity from whom the Supplier acquired the PRODUCT. BUYER shall provide a copy of any such agreement to GMP prior to selling any PRODUCT to said third party. BUYER shall warrant and ensure that all subsequent purchasers of PRODUCT through BUYER will not sell PRODUCT for resale in violation of this Agreement.

15. BUYER agrees that GMP or its representatives may periodically inspect any of BUYER's business locations to verify BUYER's compliance with this Agreement.

16. BUYER acknowledges and agrees that GMP is making a **domestic sale** to BUYER. As such, BUYER certifies that it has a registered business address in the United States of America. BUYER, not GMP, shall be listed as the exporter of record on the United States Principal Party in Interest ("USPPI") if PRODUCT is exported, and BUYER further agrees that BUYER is solely responsible for compliance with all US export regulations, including but not limited to, US Export Administration Regulations, US Treasury Regulations and US Department of Defense Regulations, as applicable, and shall be responsible for and indemnify GMP for any fines, penalties or costs associated with BUYER's non-compliance with export regulations for which GMP becomes liable. BUYER shall provide GMP with copies of customs declarations, ports of departure and ports of arrival information on request.

17. If any PRODUCT purchased by BUYER, including, but not limited to, computers, cameras, mobile devices, e-readers and tablet computers contains, or may contain, electronically stored Customer Personal Information as defined below ("CPI"), BUYER agrees, prior to the BUYER's resale of the Product or any of its components, (a) to access such CPI solely for the purpose of permanently erasing all CPI or (b) in the event the BUYER is unable to electronically access and erase CPI, to physically destroy the functionality of the memory storage components of the Product so as to render the CPI permanently irretrievable. BUYER shall keep all CPI confidential and shall not use it for any purpose, and shall indemnify, defend and hold GMP and its affiliates harmless against any liability for BUYER's or its purchaser's failure to comply with this provision. "**Customer Personal Information**" or "**CPI**" shall mean any information that may have been created by a former user of a device. This information may

include customer name, user name, password, PIN, address information, configuration information, images, or other user stored information resulting in a change from the original manufacturer's configuration of the device.

18. BUYER agrees to indemnify, defend and hold the Supplier and GMP (including their successors, assigns, affiliates, parents, subsidiaries and divisions, and each of their respective present and future officers, directors, employees, agents and/or independent contractors) harmless against and from any and all claims, demands, damages, actions, suits or proceedings (civil, criminal, administrative or investigative), settlements, costs, losses and expenses (including, without limitation, **reasonable attorneys' fees and costs**), penalties, fines, judgments and liabilities or other relief sought of any kind and nature whatsoever arising from: (a) any sale or resale of the PRODUCT; (b) any misrepresentation or breach of this Agreement; (c) any actual or alleged act of commission or omission by BUYER and/or BUYER's successors, assigns, affiliates, parents subsidiaries and/or divisions, and/or any of their respective affiliates, successors, assigns, officers, directors, employees, agents, and independent contractors; (d) any violation of the sale restrictions set forth in paragraphs 8, 9, 10, 11 and 12, (e) any claim of copyright, trademark, and contributory copyright or trademark infringement, in any way, related to the PRODUCT or the sale restrictions set forth in paragraphs 8, 9, 10, 11 and 12.

19. BUYER acknowledges that Supplier/GMP is not required to sell merchandise to BUYER and BUYER is not required to purchase PRODUCT from Supplier/GMP. GMP makes no representations concerning the future availability of PRODUCT.

20. **Dispute Resolution Process:** This paragraph provides the **exclusive** means of redress for any disputes arising under this Agreement or any transaction covered by this Agreement. BUYERs with a claim that PRODUCT purchased does not conform to the Notification of Sale, or was materially misrepresented (in terms of quality, quantity, or both) must contact their GMP Sales representative within ten (10) business days of the payment date to attempt to resolve the dispute. GMP will respond to the dispute within five (5) business days thereafter. If BUYER is dissatisfied with how GMP proposes to resolve the dispute, BUYER must complete a Dispute Investigation Form (available on [GENCOMarketplace.com](http://GENCOMarketplace.com)) and submit it by e-mail to GMP Customer Support at [support@GENCOMarketplace.com](mailto:support@GENCOMarketplace.com) within ten (10) business days from receipt of GMP's response. Customer Support shall provide a case number and confirmation of dispute to BUYER within one (1) business day provided that BUYER's claim contains a sufficiently detailed description of BUYER's dispute (which should include manifests, photos and other documentation). Failure to do submit a sufficiently detailed description of the dispute may result in a denied claim. GMP shall determine in its sole discretion whether a claim is sufficiently detailed. Because PRODUCT is sold "AS-IS, WHERE IS" as set forth in paragraph 3, GMP is under no obligation to take any action on a complaint. If GMP cannot resolve the dispute with BUYER within 15 business days of the receipt of the Dispute Investigation Form then the BUYER may elect to resolve the dispute through binding arbitration by filing a complaint with the American Arbitration Association ("AAA") as set forth in paragraph 17 below within thirty (30) days after the dispute resolution procedure has been exhausted. BUYER ACKNOWLEDGES AND HEREBY WAIVES any right to bring a dispute under this Agreement in a court of competent jurisdiction. GMP shall not be liable to BUYER for any damages if BUYER has not exhausted the dispute resolution procedures set forth in this

paragraph. Each party shall submit to the jurisdiction of the AAA and shall bear its own cost of arbitration in the event of any dispute arising under paragraph 19 of this Agreement. The parties agree to arbitrate in Pittsburgh, Pennsylvania in accordance with the procedures and rules of the AAA. Any award rendered in the arbitration proceedings shall be binding and final upon the parties and may be entered as a judgment in any court of competent jurisdiction.

21. BUYER agrees to submit to the jurisdiction of any competent state or federal court encompassing Allegheny County, Pennsylvania against BUYER seeking injunctive relief for violations of paragraphs 9, 10, 11 or 12, or for the purpose of compelling arbitration consistent with this Agreement. BUYER agrees to pay reasonable attorney's fees, costs and expenses that GMP incurs to enforce the terms of this Agreement.

22. BUYERs that attempt to rescind a credit card transaction (i.e., chargeback) without GMP's express written consent shall have their account immediately suspended and/or permanently deactivated. If BUYER performs a chargeback after receiving PRODUCT purchased, GMP may take any and all action to preserve its rights, including, without limitation, initiating criminal proceedings.

23. Neither BUYER nor its agents shall offer, among other things, monetary compensation, gratuities, gifts, premiums, awards, entertainment tickets, coupons, trips, bonuses, or prizes to any GMP teammate and/or employee of the Supplier regardless of monetary value, or solicit any GMP teammate to falsify any record, receipt, invoice or the like. BUYER agrees not to sell any PRODUCT to an employee of GMP. Such actions shall be deemed a material breach of this Agreement.

24. BUYER or its agents shall notify GMP by e-mail at [support@GENCOMarketplace.com](mailto:support@GENCOMarketplace.com) if he/she/it is solicited by a GMP teammate and/or employee of the Supplier who is seeking favors of any nature in exchange for products or services.

25. **Limitation of Liability.** GMP shall not be liable to BUYER or BUYER's customers for direct, indirect, incidental, punitive, special or consequential damages or losses of any kind whatsoever, including but not limited to, transportation costs, loss of profit or anticipated profit, loss of business, business opportunity, goodwill, or loss of production caused by any delay, failure of delivery, or failure of PRODUCT to conform to specifications. BUYER specifically understands and agrees that GMP shall not be liable in tort, whether based on negligence, strict liability or any other theory of tort liability, for any action or failure to act with respect to the sale or delivery of PRODUCT. In the event of a failure to deliver or the non-conformance of PRODUCT, and such failure or non-conformance is due to the fault of GMP, liability of GMP shall not exceed an amount equivalent to the sales price of PRODUCT for the particular transaction at issue.

IN NO EVENT SHALL GMP BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM (A) ANY INJURY TO ANY PERSON OR PROPERTY CAUSED BY THE PRODUCT OR (B) DEFECTS IN (C) OR MISUSE OF SUCH PRODUCT UNDER ANY THEORY OF LIABILITY INCLUDING WITHOUT LIMITATION PRODUCT LIABILITY EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT

THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN ADDITION, IN NO EVENT SHALL GMP BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO THE USE OF, OR THE INABILITY TO USE, THE SERVICE, THE SITE OR ITS CONTENT, OR THE PURCHASE OF PRODUCT.

26. GMP's intellectual property ("intellectual property") includes, but is not limited to, all inventions, know-how, buyer and seller lists, improvements, discoveries, methods, processes, concepts, designs, ideas, prototypes, samples, drawings, blueprints, specifications, computer or intellectual property programs, methods of doing business, copyrights, trademarks, trade names, software and/or other works conceived of and/or reduced to practice or writing or otherwise relating to GMP's services. Our intellectual property may be created by one or more of our employee(s) alone or jointly with you or other BUYERs arising from the use and development of GMP's services or as a result of your feedback regarding the services. All right, title and interest in any Intellectual Property developed during your use of GMP's services shall belong to GMP and shall be subject to the conditions of this BUYER Agreement. You hereby irrevocably assign to GMP all right, title and interest you may acquire in any of GMP's Intellectual Property. GMP may, file an application for intellectual property protection for its Intellectual Property. If any of our Intellectual Property is created with your participation, you agree to cooperate with us to ensure that such application(s) will cover all related assets, including all features of commercial interest and importance. GMP's Intellectual Property is the sole and exclusive property of GMP, and its subsidiaries and affiliates, unless otherwise stated and may not be used without our prior written consent.

27. GMP shall not be liable for any delay in or the impairment of performance resulting in whole or in part Acts of God, labor disruptions, shortages, inability to produce product, supplies of raw materials, weather conditions, war or any other circumstances or causes beyond the control of GMP in the conduct of its business.

28. BUYER acknowledges that a breach of paragraphs 9, 10, 11, 12, 13 and 16 of this Agreement constitutes a material breach of this Agreement for which GMP shall have the right to institute legal action pursuant to paragraph 21.

29. BUYER agrees to not communicate with GMP's clients, affiliates, suppliers, contractors or business associates concerning PRODUCT without the express written consent of GMP.

30. BUYER acknowledges and understands that the transactions covered under this agreement are commercial transactions. BUYER agrees to waive the protections of any applicable consumer protection law to the extent permitted by law.

31. As a condition of purchasing PRODUCT pursuant to this Agreement, BUYER shall provide to GMP a valid business license or seller's permit, a tax certificate/ID number, and sales and use tax documentation.

32. GMP may terminate this Agreement at any time and for any reason. The requirements of paragraphs 10, 11, 12, 13, 17, 19, 20, 21, 23, 24 and 26 shall survive the termination of this Agreement.

33. This Agreement has been entered into in the Commonwealth of Pennsylvania and any matter whatsoever which arises out of or is connected in any way with the Agreement shall be governed by and construed and enforced exclusively in accordance with the statutory or common laws of Pennsylvania without consideration of conflict of law principles. The rights and obligations of the parties shall not be governed by the United Nations Convention on Contracts for the Sale of Goods.

34. The parties agree that this Agreement, the transactions pursuant to this Agreement and the relationship between GMP and BUYER shall be deemed arms-length. There shall exist no implied or otherwise unstated covenants, rights or obligations by, of or against either party. The parties expressly disclaim the existence of any implied covenant of good faith or fair dealing.

35. This Agreement constitutes the entire Agreement between the parties hereto and the parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein and that each party has relied on his/her/its own judgment in entering into this Agreement and that each party has had ample opportunity to have this Agreement reviewed by counsel. This Agreement supersedes all previous letters, understanding, written agreements or verbal agreements between the Parties that relate to the purchase of PRODUCT.