

STANDARD TERMS & CONDITIONS OF LOANS AND PURCHASES OF RECEIVABLES

LAST UPDATED 18 MARCH 2020

1. About us

- 1.1. Company details. SellersFunding International Portfolio Ltd (company number 12439031) (**SellersFunding**) is a company registered in England and Wales and our registered office is at 4th Floor Imperial House, 8 Kean Street, London, United Kingdom, WC2B 4AS.
- 1.2. Contacting us. To contact SellersFunding telephone +44 203 998 9777 or e-mail contact-uk@sellersfunding.com. How to give SellersFunding formal notice of any matter under or in connection with these Terms is set out in clause 10.

2. Scope and effect of these Terms

- 2.1. These Terms apply to and shall be deemed incorporated into any loan agreement (**Loan Agreement**) and/or receivables purchase agreement (**Receivables Purchase Agreement**) made between the Merchant and SellersFunding.
- 2.2. Notwithstanding clause 2.1., certain provisions within these Terms may be intended only to apply to either Loan Agreements or Receivables Purchase Agreements and where this is expressly stated, these provisions shall only apply as so intended.
- 2.3. A list of the defined terms used in these Terms is set out at clause 23 together with rules of interpretation.

3. Representations and Warranties.

- 3.1. The Merchant makes the following representations and warranties at the point of entry into each Contract:
 - 3.1.1. the Merchant (a) is a duly incorporated limited liability company validly existing under the law of its jurisdiction of incorporation, and (b) has the power to own its assets and carry on its business as it is being conducted (in each jurisdiction in which Merchant's business is conducted);
 - 3.1.2. the Merchant has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Transaction Documents and the transactions contemplated by them;
 - 3.1.3. no limit on its powers will be exceeded as a result of the borrowing or grant of security contemplated by the Transaction Documents;
 - 3.1.4. the Merchant's legal name, address, jurisdiction of incorporation, formation or organisation and principal place of business, are as shown in the Transaction Summary;
 - 3.1.5. the entry into and performance by it of, and the transactions contemplated by, the Transaction Documents do not and will not contravene or conflict with:
 - 3.1.5.1. the Merchant's constitutional documents;
 - 3.1.5.2. any agreement or instrument binding on it or its assets or constitute a default or termination event (however described) under any such agreement or instrument; or
 - 3.1.5.3. any law or regulation or judicial or official order, applicable to it;
 - 3.1.6. the Merchant is actively engaged in business and commercial affairs;
 - 3.1.7. the Merchant has not at any time been a party to a dispute with the Marketplace or with any other online marketplaces or third-party reseller in relation to the supply or

- alleged supply of fraudulent or counterfeit goods or services;
- 3.1.8. the Merchant does not have any unresolved dispute with the Marketplace or with any other online marketplaces or third-party reseller concerning goods or services delivered by either party, or payments due to or from the Merchant;
 - 3.1.9. the Merchant is solvent, on both a balance sheet and on an equitable (cash flow) basis, and will not become insolvent, on either basis, after giving effect to the transactions contemplated by the Transaction Documents;
 - 3.1.10. neither the Merchant nor any Guarantor is a party to any action, claim or legal proceedings in or before any court, arbitrator or other body (nor is any such action, claim or legal proceedings threatened or anticipated, to the best of the Merchant's and each Guarantor's knowledge), that could reasonably be considered likely to have a Material Adverse Effect;
 - 3.1.11. the Merchant is not in default under any contract, or the order of any court, arbitrator or governmental body;
 - 3.1.12. the Merchant has not previously offered or provided goods or services via or in connection with the Marketplace under any name other than its current name as set forth in the Transaction Summary;
 - 3.1.13. the Merchant has not received notice or otherwise learned of the actual, imminent or likely bankruptcy, insolvency, or material impairment of the financial condition of the Marketplace that is the obligor with respect to Future Receivables (as defined in the Receivables Purchase Agreement);
 - 3.1.14. the Merchant is not an employee, contractor, or an Affiliate of the Marketplace that is the obligor with respect to Future Receivables through common ownership, management or control, or otherwise;
 - 3.1.15. the Merchant has full authority to deliver all data that the Merchant delivers to SellersFunding and/or the Marketplace that is the obligor with respect to Future Receivables;
 - 3.1.16. the Merchant is entering into the Transaction Documents strictly as a commercial entity;
 - 3.1.17. the Merchant is not a consumer. The Merchant will use the proceeds from transactions contemplated by the Transaction Documents solely for business and commercial purposes, and not for household or consumer purposes;
 - 3.1.18. the Merchant owns or has obtained a license to use all intellectual property rights, trading names, trade marks and/or trade styles which Merchant uses, or will use, with respect to the goods and services delivered by Merchant to the Marketplace that is the obligor with respect to Future Receivables;
 - 3.1.19. the Merchant has not previously assigned, licensed or sub-licensed or encumbered its interest in any such intellectual property rights, trading names, trade marks or trade styles to any third party in such a way that that could in any way detrimentally effect its use of the same in connection with the Marketplace that is the obligor with respect to Future Receivables;
 - 3.1.20. the Merchant represents that (i) the Merchant has no present intention to close or cease operating the Merchant's business, in whole or in part, temporarily or permanently, (ii) the Merchant is solvent and not contemplating any insolvency or bankruptcy proceeding, (iii) during the four (4) months preceding the date the

Merchant has entered into the Receivables Purchase Agreement or Loan Agreement, as applicable, neither the Merchant nor any Guarantor has discussed with or among the Merchant's management, legal advisers, or any other adviser or creditor, any potential insolvency, bankruptcy, receivership, or assignment for the benefit of creditors with respect to the Merchant and no such action or proceeding has been filed or is pending, (iv) no eviction or foreclosure is pending or threatened against the Merchant and (v) the Merchant conducts business only under its own name and/or such trading name as listed in the Transaction Summary;

- 3.1.21. the Merchant is in compliance with all applicable laws, rules and regulations relating to: (i) the operation of the Merchant's business, including the collection of accounts receivable; and (ii) the provider of the Marketplace Account (as defined below) and Bank Account and any online sales channels (e.g. Amazon) applicable to the Merchant's business;
- 3.1.22. the Merchant possesses and is in compliance with all permits, licenses, approvals, consents, registrations and other authorisations necessary to own, operate and lease its properties (where applicable) and to conduct the business in which it is presently engaged;
- 3.1.23. except as identified in the Transaction Summary, neither the Merchant nor any Guarantor is a debtor of or has sold receivables to SellersFunding except for the transactions contemplated by the Transaction Documents;
- 3.1.24. the Merchant is entering into the Transaction Documents solely for business purposes and not as a consumer for personal, family or household purposes. The Marketplace Account and Bank Account are each specifically designated as business purpose accounts and neither the Marketplace Account nor the Bank Account are used for personal, family or household purposes; and
- 3.1.25. no information (financial and other) provided or to be provided by or on behalf of the Merchant or any Guarantor to SellersFunding in connection with the Transaction Documents contains or will contain any untrue statement or omits to or will omit to state a material fact necessary to make any of them, in light of the circumstances in which it was or will be made, not misleading. The Merchant shall furnish SellersFunding such information as SellersFunding may request from time to time.

3.2. Representations and warranties as to the Transaction Documents.

- 3.2.1. The Merchant and each Guarantor have full power, authority and capacity to enter into and perform the obligations under the Transaction Documents, each of which has been duly authorised by all necessary and proper actions and duly executed and delivered by the Merchant and the Guarantors, as applicable.
- 3.2.2. The execution and delivery by the Merchant and each Guarantor of the Transaction Documents and the consummation of the transactions contemplated thereby:
 - 3.2.2.1. will not contravene or violate (i) the Merchant's constitutional documents nor contract nor instrument by which the Merchant or any Guarantor, or the Merchant's or such Guarantor's property, is bound or (ii) as to the Merchant and each Guarantor that is an entity, any of its constitutional documents;
 - 3.2.2.2. will not contravene or violate any writ, order, judgment, award, injunction or decree binding on or affecting the Merchant or any Guarantor or the Merchant's or any

3.2.2.3. Guarantor's property; and will not result in the creation or imposition of any lien, encumbrance or adverse claim on the assets of the Merchant or any Guarantor, other than in favour of SellersFunding and its assigns under the Transaction Documents.

3.3. General Representations and Warranties.

3.3.1. The Merchant has satisfied all duties, covenants, representations, warranties and undertakings of the Merchant set forth in the Transaction Documents.

3.3.2. Both before and after giving effect to the transactions contemplated by the Transaction Documents, there is (and to the best of the Merchant's knowledge will be) no default or Event of Default (as defined below) under the Transaction Documents.

3.3.3. SellersFunding shall have no duty or obligation to perform, in any respect, any contracts or duties of the Merchant to the Marketplace, any other marketplace or third party that is the obligor with respect to Future Receivables, or any other person or entity with respect to any receivables owed by the Marketplace, such other marketplace or such other third party.

3.3.4. The correct, and exact, legal name of the Merchant is the name of the Merchant as shown on the Transaction Summary. The Merchant is not the successor to, a continuation of, or the assignee of any third person.

3.3.5. The Transaction Documents are all in full force and effect, without waiver, claim, set-off, deduction or other dispute by any party thereto.

3.3.6. The Merchant represents that neither it nor any of its Affiliates has ever had a payment dispute, clawback, or an actual or purported terms of service violation from the Marketplace or any of its Affiliates or any other marketplace or any third party reseller and that each of the Merchant and its Affiliates is in compliance with the Marketplace terms of service and any other agreement with the Marketplace.

3.4. Representations and Warranties in respect of the Receivables Purchase Agreement

The Merchant makes the following representations solely in connection with the Receivables Purchase Agreement:

3.4.1. Each Future Receivable:

3.4.1.1. is a bona fide, existing, unconditional and enforceable obligation of the Marketplace arising out of the final sale of Goods and/or the completed rendering of Services by the Merchant to the Marketplace in the ordinary course of its business, and is presently due and owing to SellersFunding, in the amount shown in the applicable Transaction Document;

3.4.1.2. is solely owned by the Merchant, who has the right to sell, assign and transfer such Future Receivable to SellersFunding;

3.4.1.3. arises from Goods previously delivered or Services previously performed by the Merchant to the Marketplace that is the obligor with respect to Future Receivables, that do not violate any law, rule, regulation or agreement by which the Merchant or any of its contractual counterparties is bound;

3.4.1.4. is free and clear from any and all encumbrances, liens, attachments, claims, security interests and rights of any person other than SellersFunding;

3.4.1.5. is in the correct amount specified in the applicable Transaction Document, and is free of

- any dispute, deduction, claim, credit, offset or return of any kind;
- 3.4.1.6. is payable by the Marketplace that is the obligor with respect to Future Receivables, and does not, together with all other uncollected accounts owed to the Merchant by the Marketplace violate the Marketplace Credit Limit; and
- 3.4.1.7. relates to a Future Receivable that has not been previously paid and was not previously offered to SellersFunding hereunder or previously rejected by SellersFunding for purchase.
- 3.5. Without limitation of any other provision of the Transaction Documents, for all Future Receivables that will be offered for sale to SellersFunding, the Merchant represents and warrants there has been no prepayment, payment dispute, clawback, unreported offset or contra accounting item, or an actual or purported terms of service violation from the Marketplace that is the obligor with respect to Future Receivables. Furthermore, the Merchant agrees to immediately report to SellersFunding the existence of any of the foregoing if they arise at any point while Obligations are outstanding under the Transaction Documents.

4. **Covenants.**

The Merchant agrees that until all Obligations under the Transaction Documents have been irrevocably paid in full:

- 4.1. Information. The Merchant will provide SellersFunding with access to view the activity in (a) the Merchant's commercial transaction account(s), including, but not limited to, (i) the Merchant's Marketplace business account or accounts, the details of which the Merchant has provided to SellersFunding (individually and collectively, the Merchant's **Marketplace Account**), (ii) the Merchant's business checking account or accounts, the details of which the Merchant has provided to SellersFunding (individually and collectively, the Merchant's **Bank Account**), and (b) such other accounts as SellersFunding may reasonably deem necessary and advisable, for the purpose of monitoring the Merchant's business activity and finances. In addition, the Merchant will provide SellersFunding with such sales and shipping data as SellersFunding may reasonably request.
- 4.2. Changes to Marketplace Account/ Bank Accounts. The Merchant shall not (i) change the details of the Marketplace Account or any Bank Account, (ii) open any new marketplace account, business bank account or other account or (iii) close the Marketplace Account or any Bank Account or any other account, in any case without the prior written consent of SellersFunding.
- 4.3. Credit Reports and Other Information. The Merchant and each Guarantor hereby expressly authorize SellersFunding, its agents and representatives, and any credit reference agency engaged by SellersFunding, to (i) request information about and investigate the Merchant or the Guarantors and any references given or any other statements or data obtained from or about the Merchant or any Guarantor for the purpose of the transactions contemplated by the Transaction Documents and (ii) pull credit reports (including on any Guarantor), whether in connection with the Merchant's application with respect to a loan or receivables purchase transaction or at any time thereafter. In addition to SellersFunding's privacy policy, the Merchant and Guarantor should refer to Experian (SellersFunding's current credit reference agency)'s

information notice (available at: <https://www.experian.co.uk/crain/>) for further information on how data (including personal data relating to any Guarantor) will be treated in this process.

- 4.4. Notice of Event of Default. The Merchant agrees to furnish to SellersFunding, promptly, and in any event within five days, written notice of any Event of Default or of any occurrence, event or condition that would with lapse of time constitute an Event of Default and a summary of the remedial steps which the Merchant is taking or proposes to take with respect thereto.
- 4.5. Use of Proceeds. The Merchant will not use any amount loaned (or otherwise received from SellersFunding) for personal, family or household purposes nor make any payments to SellersFunding from any consumer account.
- 4.6. Nature of Business. The Merchant will not change the nature of the business that the Merchant conducts from the type of business originally disclosed to SellersFunding in connection with the Transaction Documents.
- 4.7. Conduct of Business. The Merchant will conduct the Merchant's business substantially in accordance with its established practices and with the skill and diligence that could reasonably be expected of a person or entity experienced in the same type of business.
- 4.8. No Encumbrance of Access to Marketplace Account/ Bank Account. The Merchant will not limit, encumber or remove, or permit anyone to limit, reduce or remove, SellersFunding's access, once granted, to the Marketplace Account, the Bank Account, the marketplaces where the Merchant does business and such other accounts and sales and shipping data as SellersFunding has deemed necessary and appropriate.
- 4.9. No Changes to Marketplace Account/Bank Account. The Merchant will not replace the Marketplace Account nor Bank Account and shall not open another similar account or bank account and not to take any action to cause future sales to be settled or paid to any account other than the Marketplace Account and Bank Accounts existing on the date hereof.
- 4.10. Minimum Amount in Bank Account. The Merchant will maintain at all times a minimum balance in the Bank Account in an amount sufficient to allow SellersFunding to debit any and all amounts due and payable under the Transaction Documents.
- 4.11. Collections. The Merchant will collect on the Merchant's sales promptly, in compliance with all Applicable Laws and consistent with the Merchant's established collection practices.
- 4.12. Payments. The Merchant will facilitate BACS or Faster Payments transactions by SellersFunding (or if for any reason such payments are unable to be processed) make payments to SellersFunding (in British Sterling) on the applicable payment due date in amounts required by the Transaction Documents.
- 4.13. No Interference with Accounts. The Merchant will not to take any action to discourage the use of the Marketplace Account and not to permit any event to occur that could have an adverse effect on the use, acceptance or authorisation of the Marketplace Account for the purchase of services and/or products by the Merchant's customers.
- 4.14. Corporate Transactions. The Merchant will not sell, dispose, convey or otherwise transfer the Merchant's business or assets or enter into any mergers, consolidations or other corporate transactions without SellersFunding's express prior written permission.
- 4.15. Impairment of Receivables. The Merchant will not take any action that would

substantially impair or reduce the Merchant's generation or collection of accounts receivable adequate to satisfy the Merchant's obligations under the Transaction Documents without SellersFunding's prior written permission.

- 4.16. No Interference with transactions. The Merchant will not terminate the Merchant's authorisation of scheduled debits under the Transaction Documents, stop payment on any debit authorised pursuant to the Transaction Documents, claim that a debit transaction pursuant to the Transaction Documents is unauthorised, or seek a refund, return, chargeback or dispute of any card transaction or bank transfer related to a payment under the Transaction Documents.
- 4.17. Insurance. The Merchant shall maintain insurance with respect to its property and business (including without limitation, property, stock and public liability insurance) with financially sound and reputable insurance companies that are not Affiliates of the Merchant, in such amounts and covering such risks as are usually insured against by similar companies engaged in the same or a similar business.
- 4.18. Change in Name or Location. The registered office address and principal place of business of the Merchant are accurately set forth in the Transaction Summary. The Merchant does not and shall not conduct the Merchant's business under any name other than as disclosed to SellersFunding and shall not change its registered office or principal place of business.
- 4.19. Guarantors. Each Guarantor that is an entity is validly existing and duly authorised to guarantee the Obligations or an adult individual having full legal authority to act on behalf of himself or herself. Each Guarantor is not under any restraint and has full capacity to enter into the Transaction Documents to which it is a party. Each Guarantor does not, by the execution, delivery and performance of the Transaction Documents to which it is a party, contravene or cause a default under (a) any contractual restriction binding on or affecting such Guarantor, (b) any court order binding on or affecting such Guarantor or (c) any other legal requirement binding on or affecting such Guarantor. Each Guarantor has received and reviewed the Transaction Documents. The registered office or the principal residence of each Guarantor, as applicable, is set forth in the Transaction Summary. Guarantors shall cause the Merchant to fulfil each of the Merchant's covenants hereunder.
- 4.20. Limitation on Debt. The Merchant shall not incur any indebtedness other than in the ordinary course of business of the Merchant (and provided always that such indebtedness is not for borrowed money).
- 4.21. Limitation on Security. The Merchant has good, complete and marketable title to all of its assets, free and clear of any and all liabilities, liens, claims, charges, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances of any kind or nature whatsoever or any other rights or interests that may be inconsistent with the transactions contemplated with, or adverse to the interests of, SellersFunding. The Merchant shall not permit any liens, claims, charges, restrictions, conditions, options, rights, mortgages, security interests, equities, pledges and encumbrances to exist with respect to any of its assets except for Permitted Security.
- 4.22. The Merchant agrees to notify SellersFunding immediately if there are any errors in the information the Merchant has provided to SellersFunding, or if any Guarantor is

dissolved, dies, declared incompetent or deemed not to have capacity or suffers a Material Adverse Effect or if the Merchant or any Guarantor becomes subject to any bankruptcy or insolvency proceedings. The Merchant agrees to indemnify SellersFunding against any and all claims, losses, damages and expenses (including all legal and professional fees) arising out of any breach of these Terms in respect of any transaction. This indemnity will survive termination of the Transaction Documents.

5. Events of Default.

- 5.1. Each of the following shall constitute an “Event of Default” under the Transaction Documents:
 - 5.1.1. the Merchant fails to pay when due the full amount of any Obligation owed to SellersFunding;
 - 5.1.2. the Merchant or any Guarantor breaches any other representation, warranty, covenant or duty under any other Transaction Document or in or under any other agreement, instrument or document under which the Obligations arise, and such breach is not cured within three (3) Business Days;
 - 5.1.3. the Merchant or any Guarantor attempts to countermand, redirect, defeat, delay, avoid or enjoin the operation and effect of any instruction of SellersFunding to (i) a depository institution including the Account Bank (as defined in the Loan Agreement) to transfer funds to SellersFunding under any deposit account control agreement including the Account Control Agreement (as defined in the. Loan Agreement) or any other substantially similar agreement; or (ii) a marketplace or similar account including the Marketplace Account;
 - 5.1.4. the Merchant breaches its obligations to SellersFunding under these Terms and/or any other agreement between the Merchant and SellersFunding;
 - 5.1.5. Marketplace or any other marketplace or third party reseller that is an obligor under the Future Receivables breaches any agreement or contract, including any terms of service or terms of use, between the Merchant or SellersFunding, as applicable, and the Marketplace, other marketplace or third party reseller;
 - 5.1.6. the Merchant or any Guarantor: (i) commences any case, proceeding or other action under any existing or future Insolvency Law, seeking (A) to have an order for relief entered with respect to it, or (B) to adjudicate it as bankrupt or insolvent, or (C) reorganisation, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (D) appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or any substantial part of its assets, or (ii) makes a general assignment for the benefit of its creditors;
 - 5.1.7. there is commenced against the Merchant or any Guarantor in a court of competent jurisdiction any claim, proceeding or other action of a nature referred to in clause 5.1.6 above which (i) results in the entry of an order for relief or any such adjudication or appointment or (ii) remains undismissed, undischarged, unstayed or unbonded for 10 days;
 - 5.1.8. there is commenced against the Merchant or any Guarantor any case, proceeding or other action seeking issuance of a warrant of attachment, execution or similar process against all or any substantial part of its assets which results in the entry of an order for

- any such relief which has not been vacated, discharged, stayed or bonded pending appeal within 10 days from the entry thereof;
- 5.1.9. the Merchant or any Guarantor is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due;
 - 5.1.10. the Merchant or any Guarantor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses 5.1.6 to 5.1.8 (inclusive) above;
 - 5.1.11. the occurrence of a Change of Control;
 - 5.1.12. the death, bankruptcy, insolvency, financial inability to pay or the dissolution of any Guarantor;
 - 5.1.13. any present or future guarantor of the Obligations including any Guarantor revokes, terminates or fails to perform any of the terms of any guarantee or other agreement of such party in favour of SellersFunding or any affiliate of SellersFunding, or shall notify SellersFunding of its intention to rescind, modify, terminate or revoke any such guarantee of the Obligations, or any such guarantee shall cease to be in full force and effect for any reason whatever;
 - 5.1.14. any action or proceeding is commenced against the Merchant or any guarantor of the Merchant's Obligations to SellersFunding including the Guarantors, which SellersFunding reasonably believes may have a Material Adverse Effect;
 - 5.1.15. if the Transaction Documents fail to create, or if SellersFunding, for any reason, ceases to have, a valid undivided first-priority ownership and security interest in either (i) any Security or (ii) any Future Receivable or other Conveyed Property sold to SellersFunding under the Transaction Documents, (in each case, as applicable);
 - 5.1.16. if the Merchant, or any Guarantor, fails to immediately advise SellersFunding in writing of any lien, charge, commitment or other encumbrance that is issued against or attaches to the Merchant, any Guarantor, the Security or any Future Receivable or other Conveyed Property, as applicable, or any other assets of the Merchant or any Guarantor;
 - 5.1.17. if SellersFunding believes itself in good faith to be insecure with respect to the prospect of repayment or performance of the Obligations, or otherwise believes that the prospects for the Merchant's payment and performance of its Obligations to SellersFunding under any Transaction Document executed and delivered in connection therewith is impaired;
 - 5.1.18. if there is created any lien or other security interest in respect of any Security or the Future Receivables or other Conveyed Property, as applicable, without the written consent of SellersFunding; or
 - 5.1.19. if any tax authority seizes, levies or liens any property of the Merchant or of any Guarantor, or any governmental body otherwise takes, including by decree or order, any other action which limits or impairs the ability of the Merchant to discharge its obligations under any Transaction Document or which limits or impairs the ability of any Guarantor to perform under his, her or its guaranty of the Obligations.
- 5.2. In addition, it shall constitute an Event of Default under the Receivables Purchase Agreement if the Merchant or any Guarantor attempts to countermand, redirect, defeat, delay, avoid or enjoin the operation and effect of any assignment or notice of assignment to the Marketplace that is an obligor with respect to the Future Receivables,

relating to SellersFunding's purchase of any Future Receivables or other Conveyed Property.

6. Dispute resolution procedure

- 6.1. If any dispute arises out of or in connection with these Terms and/or the relevant Funding Document or the performance, validity or enforceability thereof (**Dispute**), then the parties shall follow the procedure set out in this clause:
 - 6.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the relevant account manager of the Merchant and relevant account manager of SellersFunding shall attempt in good faith to resolve the Dispute;
 - 6.1.2. if the relevant account manager of the Merchant and relevant account manager of SellersFunding are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director of the Merchant and a director of SellersFunding who shall attempt in good faith to resolve it; and
 - 6.1.3. if the director of the Merchant and a director of SellersFunding are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 days of service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 60 days after the date of the ADR notice.
- 6.2. No party may commence any arbitration proceedings under clause 6.3 (Arbitration) in relation to the whole or part of the Dispute until 90 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 6.3. If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or ceases to participate in the mediation before the expiry of that 90 day period, or the mediation terminates before the expiry of that 90 day period, the Dispute shall be finally resolved by arbitration proceedings in accordance with the remaining provisions of this clause 6.3:
 - 6.3.1. the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause;
 - 6.3.2. the language to be used in the mediation and in the arbitration shall be English;
 - 6.3.3. the governing law of the contract shall be the substantive law of England and Wales;
 - 6.3.4. the number of arbitrators shall be one; and
 - 6.3.5. the seat, or legal place, of arbitration shall be London.
- 6.4. The Merchant must raise any dispute it has with SellersFunding in writing as soon as reasonably practicable (and in any event within 60 days following the incident giving rise to the dispute, or following the point at which the Merchant became or should have become aware of the same) providing as much information as reasonably possible about the dispute.

7. Limitation of Liability

- 7.1. Nothing in these Terms or any Transaction Document limits any liability which cannot legally be limited, including liability for:
 - 7.1.1. death or personal injury caused by negligence;
 - 7.1.2. fraud or fraudulent misrepresentation; and
 - 7.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.2. Subject to clause 7.1, SellersFunding will not be liable to the Merchant, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms or any Transaction Document for:
 - 7.2.1. loss of profits;
 - 7.2.2. loss of sales or business;
 - 7.2.3. loss of agreements or contracts;
 - 7.2.4. loss of or damage to goodwill;
 - 7.2.5. any investigation and/or disclosure of information as permitted under the Transaction Documents; and
 - 7.2.6. any indirect or consequential loss.
- 7.3. Subject to clause 7.1, SellersFunding's total liability to you arising under or in connection with any breach or non-performance of these Terms and/or any Transaction Document, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to £100.

8. Change of Control

- 8.1. The Merchant shall promptly notify SellersFunding if:
 - 8.1.1. there is a Change of Control, or
 - 8.1.2. the Merchant becomes aware of circumstances that may result in a Change of Control.

9. Confidentiality

- 9.1. Each party undertakes that it will not at any time disclose to any person any confidential information concerning any other party to these Terms or to any Transaction Documents' business, affairs, customers, clients or suppliers, except as permitted by clause 9.2.
- 9.2. Each party may disclose another's confidential information:
 - 9.2.1. to such of its respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under a Transaction Document. Each party shall ensure that such employees, officers, representatives, subcontractors or advisers comply with this clause 9; and
 - 9.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3. Each party may only use the other's confidential information for the purpose of fulfilling its respective obligations under these Terms and/or a Transaction Document.

10. Notices and communications

- 10.1. Any notice or other communication given under or in connection with these Terms

and/or any Transaction Document (save to the extent set out otherwise therein) must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.

- 10.2. A notice or other communication is deemed to have been received:
 - 10.2.1. if delivered personally, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - 10.2.2. if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - 10.2.3. if sent by email, at 9.00 am the next working day after transmission.
 - 10.3. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
 - 10.4. The provisions of this clause will not apply to the service of any arbitration proceedings or other documents in any legal action.
 - 10.5. The Merchant and each Guarantor and any agent or representative of the Merchant or any Guarantor (each a **Merchant Party**), for purposes of communications between the Merchant Parties and SellersFunding regarding the Transaction Documents and related commercial transactions, agree that SellersFunding may contact the Merchant Parties as provided in this clause 10.5. SellersFunding may contact the Merchant Parties for any lawful reason, including in relation to the collection of amounts owed to SellersFunding and for the offering of products or services to the Merchant in compliance with SellersFunding's privacy policy in effect from time to time and that no such contact will be deemed unsolicited. The Merchant Parties specifically agree that SellersFunding may (i) contact the Merchant Parties at any address (including email) or telephone number as the Merchant Parties may provide to SellersFunding from time to time; (ii) use any means of communication, including, but not limited to, postal mail, electronic mail, telephone or other technology, to reach the Merchant Parties; (iii) use automatic dialling and announcing devices which may play recorded messages; and (iv) send text messages to any Merchant Party's telephone. The Merchant Parties may withdraw this express written consent at any time by contacting SellersFunding at the email address set out in clause 1.2 of these Terms and informing SellersFunding to discontinue sending notices to certain addresses or telephone numbers.
11. **VAT**
- 11.1. All amounts payable by the Merchant to SellersFunding under a Transaction Document that (in whole or in part) constitute consideration for VAT purposes are deemed to be exclusive of VAT. Save to the extent expressly otherwise agreed, if VAT is chargeable on any supply made by SellersFunding to the Merchant under a Transaction Document, the Merchant shall pay SellersFunding (in addition to, and at the same time as, paying the consideration) an amount equal to the amount of the VAT and, upon the Merchant's request, SellersFunding shall promptly provide an appropriate VAT invoice to the Merchant.
 - 11.2. Where a Transaction Document requires the Merchant to reimburse SellersFunding for any costs or expenses, the Merchant shall, at the same time, reimburse and indemnify

SellersFunding against all VAT incurred by SellersFunding in respect of those costs or expenses. The amount payable shall be the amount that the Lender reasonably determines is the amount that neither it, nor any other member of any group of which it is a member for VAT purposes, is entitled to recover from the relevant tax authority in respect of the VAT.

12. Stamp Taxes

12.1. The Merchant shall pay and, within three Business Days of demand, indemnify SellersFunding against any cost, loss or liability that SellersFunding incurs in relation to all stamp duty, registration and other similar taxes payable in respect of any Transaction Document.

13. Set off

13.1. SellersFunding may at any time, without notice to the Merchant, set off any liability of the Merchant to SellersFunding against any liability of SellersFunding to the Merchant, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under or in connection with the same Transaction Document. If the liabilities to be set off are expressed in different currencies, SellersFunding may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by SellersFunding of its rights under this clause shall not limit or affect any other rights or remedies available to it under these Terms, the relevant Transaction Document or otherwise.

13.2. Save only where expressly agreed otherwise in writing, all amounts due under any Transaction Document from the Merchant to SellersFunding shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14. Waiver

14.1. A waiver of any right or remedy under these Terms, any Transaction Document or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent or related right or remedy. Each waiver shall only apply for the specific instance and purpose expressly stated.

14.2. A failure or delay by a party to exercise any right or remedy provided under these Terms, any Transaction Document or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms, any Transaction Document or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.3. Without limiting the generality of the foregoing, the funding of any amounts under the Transaction Documents shall not be construed as a waiver of any Event of Default, even if SellersFunding had or may have had notice or knowledge of such Event of Default at the time.

15. Variation

15.1. No variation of these Terms (as incorporated into any Loan Agreement or Receivables Purchase Agreement) shall be effective unless:

- 15.1.1. it is in writing and signed by the parties (or their authorised representatives); or
- 15.1.2. it is made necessary by a change to applicable laws, rules or regulations, provided that SellersFunding shall be entitled to update these Terms from time to time without notice and that the latest version shall be incorporated into each new Loan Agreement and/or Receivables Purchase Agreement at the point such document(s) are executed.
- 15.2. No variation of any Transaction Document shall be effective unless it is in writing and signed by all parties thereto (or their respective authorised representatives).

16. Expenses

- 16.1. The Merchant agrees to pay all out-of-pocket expenses incurred by SellersFunding, including all reasonable legal and professional fees, charges and disbursements with respect to: (i) the enforcement or protection of its rights in connection with these Terms and/or any Transaction Document and (ii) the transactions contemplated by the Transaction Documents (including all such out-of-pocket expenses incurred in connection with any restructuring, workout or negotiations in respect of the thereof).

17. Publicity

- 17.1. The Merchant and each Guarantor expressly authorise SellersFunding to use the Merchant's or such Guarantor's name in a listing of clients and in advertising and marketing materials.

18. Consent to Electronic Disclosure

- 18.1. The Merchant can access transaction information by visiting www.sellersfunding.com (the **SF Site**) and logging in to its account. The Merchant agrees to receive any account summaries, statements, disclosures and notices (collectively, **Account Information**) electronically. SellersFunding will provide electronic copies of periodic statements and Account Information on the Merchant's account on the SF Site. The Merchant acknowledges that it is able to access the SF Site and print, or otherwise retain, electronic disclosures. The Merchant may request a paper copy of any legally required disclosure by contacting SellersFunding at the address set out at clause 1. The Merchant may also withdraw the Merchant's consent to electronic disclosures by contacting SellersFunding in the same manner.
- 18.2. If the Merchant withdraws the Merchant's consent to electronic disclosures, SellersFunding shall only be obliged to provide paper copies of those documents that SellersFunding is legally required to provide to the Merchant.
- 18.3. The Merchant agrees to provide SellersFunding (in the applicable Transaction Document) with the Merchant's current email address for notices. If the Merchant's e-mail address changes, the Merchant must send SellersFunding a notice of the new address by providing notice to SellersFunding in accordance with clause 10 at least five days before the effective date of the change.

19. Further authorisations

- 19.1. Each of the Merchant and each Guarantor may be required (by the relevant Transaction Document(s)) to authorise SellersFunding to file, and as SellersFunding deems necessary

or desirable, sign the Merchant's or any Guarantor's name on, any documents or take any actions as SellersFunding deem necessary or desirable to perfect, maintain or assure the priority of the SellersFunding's security interest in the Security.

- 19.2. Each of the Merchant and each Guarantor agree to do, execute, acknowledge, deliver, record, re-record, file, re-file, register and reregister any and all such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignments, transfers, certificates, assurances and other instruments as SellersFunding may reasonably require from time to time in order to: (i) carry out more effectively the purposes of the Transaction Documents; (ii) (to the fullest extent permitted by applicable law) subject any of the Merchant's or any Guarantor's properties, assets, rights or interests to the Security now or hereafter intended to be covered by the Transaction Documents; (iii) perfect and maintain the validity, effectiveness and priority of the Security intended to be created under the Transaction Documents; and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively to SellersFunding, the rights granted or now or hereafter intended to be granted to SellersFunding under any Transaction Document or under any other instruments executed in connection with any Transaction Document to which the Merchant or any Guarantor is or is to be a party.

20. Electronic Execution

- 20.1. The words "execution," "signed," "signature," and words of similar import in any Transaction Document shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law.

21. Governing Law

- 21.1. These Terms, each Transaction Document and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and/or a Transaction Document, their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22. Jurisdiction

- 22.1. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation to the extent such dispute or claim is reasonably deemed unable or unsuitable to be resolved in accordance with clause 6.

23. Definitions and interpretation

- 23.1. The following definitions and rules of interpretation apply in this agreement.

Account Information has the meaning set out in clause 18.1.

Affiliate as to any entity, means any other person or entity that, directly or indirectly through one or more intermediaries, is in control of, is controlled by, or is under

common control with, such person or entity. For purposes of this definition, "control" of an entity means the beneficial ownership of more than 10% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company

Bank Account has the meaning set out in clause 4.1.

Business Day: a day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business.

Change of Control: a situation where:

- a. any person, or group of connected persons not having control (as defined in sections 450 and 451 of the Corporation Tax Act 2010) of the Merchant on the date of this agreement acquires control of the Merchant; or
- b. any shareholder of the Merchant who owns more than 10% of the issued ordinary share capital of the Merchant on the date of the relevant Transaction Document transfers (whether by a single transfer or a series of transfers at different times) shares constituting, in aggregate, 10% or more in nominal value of the Merchant's issued ordinary share capital without the SellersFunding's prior written consent.

Insolvency Law means the Insolvency Act 1986, or any law, regulation or rule applicable in the United Kingdom for the relief of debtors and all other liquidation, bankruptcy, assignment for the benefit of creditors, moratorium, receivership, insolvency, rearrangement, reorganisation or similar debtor relief laws of the UK (including the schemes of arrangement falling within the ambit of the Companies Act 2006) or other applicable jurisdictions in effect from time to time.

Future Receivables has the meaning set out in the Receivables Purchase Agreement.

Goods means goods supplied or to be supplied by the Merchant.

Guarantor shall have the meaning set forth in the Loan Agreement or the Receivables Purchase Agreement, as applicable.

Loan Agreement has the meaning set out in clause 2.1.

Marketplace means Amazon.com and its Affiliates or such other marketplace or third party reseller as is the obligor in respect of the Future Receivables.

Marketplace Credit Limit means the maximum amount of all uncollected accounts receivable owed by the Marketplace to the Merchant on any particular date, as it may change from time to time.

Material Adverse Effect: any event or circumstance which, in the reasonable opinion of SellersFunding:

- a. is reasonably likely to materially and adversely affect the Merchant's or any Guarantor's ability to perform or otherwise comply with all or any of its obligations under a Contract and/or the Transaction Documents;
- b. is reasonably likely to materially and adversely affect the business, operations, property, condition (financial or otherwise) or prospects of the Merchant; or
- c. is reasonably likely to result in any Transaction Document or Contract not being legal, valid and binding on, and enforceable in accordance with its terms against, the Merchant and, in the case of a debenture, not providing to Sellerfunding security over the assets expressed to be subject to a security interest under that debenture.

Marketplace Account has the meaning set out in clause 4.1.

Merchant as used herein means either the “**Borrower**” under the Loan Agreement or the “**Seller**” under the Receivables Purchase Agreement, as applicable.

Merchant Party has the meaning set out in clause 10.5 (and **Merchant Parties** shall be construed accordingly).

Obligations has the meaning set out in the Loan Agreement or the Receivables Purchase Agreement, as applicable.

Permitted Security: any Security arising under:

- a. the Transaction Documents;
- b. any liens arising by operation of law and in the ordinary course of the Merchant's business and not as a result of any default or omission by the Merchant;
- c. any normal title retention arrangements included in a supplier's standard conditions of supply of goods acquired by the Merchant in the ordinary course of trade;
- d. any netting or set-off arrangement entered into by the Merchant in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances; and
- e. Security created or outstanding with SellersFunding's prior written consent.

Receivables Purchase Agreement has the meaning set out in clause 2.1.

Security: any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

SellersFunding has the meaning set out in clause 1.1.

Services means services rendered or to be rendered by the Merchant.

SF Site has the meaning set out in clause 18.1.

Transaction Documents means the “Transaction Documents” as defined in the Receivables Purchase Agreement or the “Loan Documents” as defined in the Loan Agreement, as applicable and a **Transaction Document** shall be construed accordingly.

23.2. These Terms shall be binding on, and enure to the benefit of, the Merchant and SellersFunding and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

23.3. A reference to **writing** or **written** includes fax and email.

23.4. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.