



## MERCHANT AGREEMENT

THIS AGREEMENT made and entered into by and between CREDIT UNION WEST ("CUW") and \_\_\_\_\_ ("Merchant").

### W I T N E S S E T H

WHEREAS, Merchant, from time to time sells materials and services on a credit basis to consumers ("Buyers") using retail installment contracts ("Contracts" or a "Contract"), and

WHEREAS, CUW has agreed, without creating any obligation to do so, to purchase, and Merchant has agreed to sell Contracts on such terms as may be agreed to by the parties, and

NOW THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Merchant and CUW agree that, any sale of any Contract between Merchant and CUW shall be subject to the following terms and conditions:

#### I. GENERAL WARRANTIES

##### YOU HAVE A WARRANTY SECTION BELOW

Merchant warrants that it shall provide all of the services purchased in a timely and workmanlike manner or the products purchased by the third party purchaser.

#### II. PURCHASE PRICE

At the time of purchase of any Contracts, CUW shall pay to Merchant such sums as agreed to between the parties. The assignment of the Contract to CUW shall be conclusive proof of the agreement of the parties of the consideration for the purchase. However, nothing contained in this Agreement shall obligate CUW to purchase any Contract from Merchant and CUW can determine, at its sole discretion, which, if any Contracts it will purchase.

#### III. INDEMNIFICATION

With regard to any Contract sold to CUW, Merchant agrees to save and hold harmless from and indemnify CUW against any and all losses of principle or finance charges thereon; damages, judgments, fines, punitive damages; consequential loss of any sort whatsoever; and claims, including lawsuits, arbitrations, counterclaims, or legal proceedings of any type whatsoever and including, but not limited to, claims of death or injury to any person or damage to any property; arising or brought about by reason of or in connection with any claim, arising out of, or based in any manner whatsoever upon (i) the Merchant's intentional or negligent act, or (ii) the Merchant's default in the performance of the Contract with the Buyer, (iii) claims that the goods or services sold are defective, (iv) claims or related warranty claims, or any type of consumer protection claims, or product liability claims, (v) any other wrongful act of Merchant in the transaction giving rise to such Contract; or (vi) or breach of this Agreement. (collectively the "Merchant's Acts").

The indemnification shall include reimbursing or paying CUW's attorney's fees, expert fees/costs, travel related costs, court costs, costs of investigation, computer research costs, copies, and similar costs incurred by CUW in conjunction with or arising out of the Merchant's Acts or any such claim, whether or not a lawsuit, arbitration or any other type of legal proceeding is filed. CUW shall have the right to employ legal

counsel of its own choosing in connection with any claim against which CUW is hereby indemnified by Merchant.

In addition to Indemnifying CUW, in the event any debtor on any such Contract shall make any claims regarding the services provided or products purchased or the Merchant breaches this Agreement, Merchant hereby agrees that it will, at CUW's option, repurchase, within three business days of receiving written demand from CUW, such Contract from CUW and pay to CUW a sum equal to the outstanding amount of Amount Financed (IS THIS A DEFINED TERM? YOU HAVE CAPITALIZED IT) owing at that time plus any accrued and unpaid finance charge and any actual out of pocket expenses incurred by CUW with regard to said Contract. The terms and conditions of this hold harmless and indemnity Agreement shall remain in full force and effect and shall be binding upon the Merchant, notwithstanding termination of this Agreement or any such repurchase of such Contract by Merchant from CUW and Merchant shall remain liable for paying any sums set forth herein and otherwise indemnifying CUW.

#### IV. WARRANTIES

With respect to all Contracts assigned by Merchant to CUW, Merchant warrants:

1. Merchant has properly executed the assignment of such Contract and said assignment describes, controls, and regulates the terms of the assignment.
2. Merchant has complied with all federal, state and local laws, rules, regulations, and ordinances.
3. The assignment of any of the Contracts to CUW will not relieve Merchant of any liability or legal obligations Merchant may have to any parties to the Contract by virtue of the sale and/or assignment.
4. The Contract is genuine and the statements and amounts inserted therein are correct.
5. The Contract arose entirely from the sale of the materials and/or services described in the Contract.
6. The down payment, if any, set forth herein, has been received by Merchant and, other than the factory rebates or incentives, no part thereof was advanced directly or indirectly by Merchant to Buyer.
7. The goods and services have actually been furnished to the satisfaction of Buyer and all obligations to and/or warranties to Buyer either expressed or implied have been and will continue to be fulfilled by Merchant and/or the manufacturer of said goods sold.
8. The full amount of the stated Amount Financed on the Contract remains unpaid.
9. Merchant is the holder of the Contract and has full power and authority to assign the same.
10. The transaction was consummated on the date set forth in the Contract and Buyer did not receive possession of any materials or services prior to the date of consummation and Merchant has not sold, transferred, pledged, or encumbered all or any portion of the Contract.
11. Buyer was furnished a completed copy of the Contract prior to consummation.
12. Merchant has not communicated to CUW incorrect information relating to the Buyer's application or credit statement or failed to communicate information relating to such application or credit statement.
13. The facts set forth in the Contract are true.
14. Buyer has no defense or counterclaim to payment of the obligation evidenced by the Contract.
15. All amounts reflected in the Contract will be or have been actually paid to the appropriate party.

16. Merchant has not violated any type of consumer protection, Truth in Lending, or similar consumer credit statutes, rules, or regulations.
17. No misrepresentations have been made to Buyer.
18. The retail installment contract represents a bonafide sale and all signatures on documents are genuine.
19. Products purchased by the Buyer were properly assembled and installed and Merchant has the required licenses, permits and bonding.
20. All documents have been signed by an employee of Merchant who is authorized to bind Merchant to the terms of the Agreement.
21. Merchant has paid all subcontractor invoices prior to submitting documents for funding or Merchant will pay all outstanding subcontractor invoices from loan proceeds upon receipt of loan funding.
22. Merchant has good title to the documents, has the right and authority to sell, assign and transfer the documents and CUW shall have a valid and perfected first priority security interest in the Products and the buyer(s) shall have good title to the Products sold.
23. Merchant must perfect the lien for CUW on titled products within 20 days of the contract date.
24. Merchant has no knowledge of facts not disclosed to CUW that may impair the Buyer's credit.
25. Buyers have the legal capacity to contract.
26. There are no representations or warranties made to Buyers that are not contained in the documents other than a manufacturer's warranty.
27. There are no oral representations or agreements between Buyer and Merchant regarding the products, payments, rebates, or warranties.

## V. DEFAULT

Without limiting what constitutes a default and without limiting CUW's rights and remedies, the happening of any of the following events or conditions shall constitute a default by Merchant as such term is used herein:

1. Merchant's failure to perform any obligation under this Agreement or the assignment provisions of any Contract purchased by CUW under this or any other Agreement with CUW.
2. Merchant's failure to pay any sums due and owing CUW under this or any other Agreement with CUW;
3. Merchant ceases to do business as a going concern; Merchant's dissolution, termination or insolvency, inability to meet any debt as it matures, appointment of a receiver for Merchant or of its property, an assignment of the benefit of creditors or the commencement of any proceeding under any bankruptcy or insolvency law by or against Merchant when the merchant is the debtor;
4. If any warranty, representation or statement made or furnished to CUW by or on behalf of Merchant, in connection with this Agreement or any Contract purchased by CUW is false or has been breached in any material respect;
5. If any warranty, representation or statement made or furnished to Buyer by or on behalf of Merchant, in connection with their contract, goods purchased, warranties, rebates, payments or any other issue is false or has been breached in any material respect; and

6. Merchant fails to provide such statements of financial condition in the form and at the time or times as CUW may reasonably require.

In the event of default under this Agreement or any other agreement between CUW and Merchant, the total indebtedness due to CUW by Merchant shall become immediately due and payable.

In the event of a default under this Agreement by Merchant which applies to a specific Contract, Merchant agrees to repurchase said Contract from CUW and immediately pay, within three business days or receiving written notice from CUW, to CUW a sum equal to the outstanding amount of Amount Financed owing at that time plus any accrued and unpaid finance charge and any actual out of pocket expenses incurred by CUW with regard to said Contract and any costs or expenses of collection incurred by CUW after its written notice to Merchant of Merchant's default and CUW's written request to Merchant requesting Merchant to repurchase the Contract, including attorney's fees whether incurred by CUW by suit or an appeal or otherwise.

If Merchant does not timely remedy the subject default or repurchase the subject Contract, CUW may, in its sole discretion and without further notice, immediately enforce its legal rights and remedies afforded by Arizona law and this Agreement. No remedy hereunder is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and in addition to any and every other remedy given under this Agreement and those provided by law. No delay or omission by CUW to exercise any right or under this Agreement shall impair any such right or remedy nor be construed to be a waiver thereof. No failure on the part of CUW to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right hereunder.

## VI. COLLECTIONS

Merchant consents that CUW may grant extensions of time, make compromises with the Buyers or other persons liable on the Contracts and otherwise handle the making of collections in accordance with CUW's sole discretion.

CUW agrees that Merchant is not a Guarantor of payment of any debt of any Buyer arising under any assigned contract and that Merchant's liability for the payment of any assigned contract is limited to its obligation to indemnify in accordance with the provisions of Article III, and the breach of this Agreement.

Notwithstanding anything herein to the contrary, Merchant will solely be responsible for the assessment, collection and remittance to any state, city, county, municipal, or federal taxing authorities all sales taxes arising out of any transaction subject to each Contract purchased by CUW.

## VII. TERMINATION

This Agreement shall continue in effect until terminated by either party upon giving the other party written notice of election to terminate. Either party hereto may terminate this Agreement at any time and for any reason. However, this Agreement shall remain in full force and effect, despite such notice of termination, as to all Contracts purchased by CUW from Merchant prior to the termination under the provisions of this Agreement which remain unpaid and all provisions, including without limitation, the indemnity and warranties shall survive termination.

## VIII. MISCELLANEOUS

This Agreement shall inure to the benefit of and bind the respective successors and assigns of the parties hereto. This Agreement shall be governed by and construed under Arizona law. All disputes arising out of or relating to the Agreement, or the breach or default of this Agreement, will be determined solely by a state Court located in Arizona, and the parties hereby specifically consent to the jurisdiction of an Arizona state court. Headings used herein are for convenience only, and will not add to or alter the meaning of the paragraphs themselves.

## IX. FAIR CREDIT REPORTING ACT

Merchant warrants that applications submitted to CUW for consideration represent executed consumer applications submitted to Merchant for the purpose of obtaining credit, and that inquiries made by CUW shall be with the consumer's full knowledge and consent and that Merchant has complied with the Fair Credit Reporting Act.

## X. CONFIDENTIALITY

Merchant will take all commercially reasonable steps and do all things reasonably necessary to ensure that information relating to the agreement shall not be disclosed or shared with other entities, without the written permission of CUW, however, these restrictions shall not apply to information provided to government agencies or third parties as required by law.

## XI. CUW MEMBER DATA

Merchant agrees to keep all CUW member data confidential and secure. Merchant will take appropriate measures when disposing of CUW member data by shredding any and all CUW member documents. CUW member data may not be shared with any other entity or person. Merchant will not use CUW member data for any purpose other than for said Contract.

## XII. NO AGENCY

Each of the parties has separate and independent rights and obligations under this Agreement and the other documents contemplated herein. Nothing contained in this Agreement or in any such documents shall be construed as creating any agency relationship whatsoever, partnership, joint venture, merger or consolidation of any of the parties for any purpose whatsoever or in any respect. Neither this Agreement nor the purchase and/or assignment of any contract creates an agency relationship between Merchant and CUW or constitute Merchant as CUW's agent or representative for any purpose whatsoever. Merchant is not granted any express or implied right to act on behalf of or bind CUW in any manner whatsoever. Nothing in this Agreement or otherwise will be construed as authorizing Merchant to create or assume any obligation or liability in the name of, or on behalf of CUW, to subject CUW to any obligation or liability to any person or entity, or to make any statement, claim or representation regarding CUW. Both Merchant and CUW expressly agree that there is no agency relationship express or implied between the parties, or a partnership, joint venture, merger or consolidation of any of the parties for any purpose or in any respect.

## XIII. Merchant Covenants

Merchant shall cooperate with CUW promptly to resolve all disputes with the buyer(s). Merchant shall promptly comply with CUW's demand for repurchase of any loan(s) as set forth in this Agreement. Merchant shall not discriminate against any potential buyer and shall not violate the Consumer Financial Protection Bureau's Regulation B (12 CFR 1002).

#### XIV. GENERAL

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

This Agreement shall supersede any and all prior written or oral agreements between CUW and Merchant relating to the purchase of Contracts. No waiver, modification or change of this Agreement shall be valid unless agreed to by CUW and Merchant in writing.

This Agreement made by Merchant herein shall be in addition to, and not in limitation of, any assignment or other instrument or agreement heretofore or hereafter delivered to CUW with respect to any specific Contract.

Merchant understands that each party hereto shall do such further acts and things and execute and deliver such further documents as are reasonably necessary to carry into effect this Agreement or to better assure and confirm to the requesting party its rights, powers and remedies hereunder.

Nothing in this Agreement shall be deemed to obligate Merchant to offer or sell Contracts to CUW or to obligate CUW to purchase any Contracts from Merchant.

CUW may appropriate equipment to specific merchants as needed to enhance web based communications, upgrade lending processes and obtain e-signatures.

This Agreement shall in no way affect any of the rights or remedies of any person or entity who is not a party to this Agreement. No person or entity who is not a party to this Agreement or who is not described herein shall gain any benefit, either expressly or by implication, from this Agreement or be a third party beneficiary hereof. It is the intent of CUW and Merchant that there are no third party beneficiaries to this Contract.

If either party hereto breaches any term of this Agreement, the breaching party agrees to pay the nonbreaching party all reasonable attorneys' fees, expert witness fees, investigation costs, travel and accommodation expenses, deposition and trial transcript costs, court costs and other costs and expenses incurred by the nonbreaching party in enforcing this Agreement or preparing for legal or other proceedings, at the trial or appellate level, whether or not such proceedings are instituted. If any legal or other proceedings are instituted, the party prevailing in any such proceeding shall be paid all of the aforementioned costs, expenses and fees by the other party, and if any judgment is secured by such prevailing party, all such costs, expenses, and fees shall be included in such judgment, attorneys' fees to be set by the court and not by the jury.

This Agreement and the additional written documents described herein, if any, set forth the entire and exclusive agreement and understanding between and among the parties hereto pertaining to the subject matter hereof and reflect the reasonable expectations of the parties hereto.

Merchant agrees to display signage within their establishment with CUW logo.

IN WITNESS WHEREOF, this Agreement has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Credit Union West**

**Merchant**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name of Signer

\_\_\_\_\_  
Date