

SOHO MODERN, LLC
AUTHORIZED RETAILER TERMS AND CONDITIONS
Effective Date: September 1, 2019

SoHo Modern, LLC ("SoHo Modern") has implemented these Authorized Retailer Terms and Conditions ("Terms"), which apply to retailers of SoHo Modern products¹ ("Product(s)") in the United States of America. By purchasing Products from SoHo Modern for retail sale, you (hereinafter "Retailer") agree to adhere to the following terms. Until such status is otherwise revoked by SoHo Modern, in SoHo Modern's sole and absolute discretion, Retailer shall be considered an "Authorized Retailer" hereunder. SoHo Modern may review Retailer's activities for compliance with the Terms and Retailer agrees to cooperate with any investigation, including, but not limited to, permitting inspection of Retailer's facilities and records related to the sale of the Products.

1. **Purchase Orders and Products.** Orders for Products ("Purchase Orders") made by Retailer will be handled pursuant to SoHo Modern's then-current product order, shipment, and return procedures, which may be amended by SoHo Modern at any time. SoHo Modern reserves the right to reject any Purchase Order, in whole or in part, for any reason. SoHo Modern reserves the right, at any time in its sole and absolute discretion and without any obligation, liability or advance notice to Retailer, to discontinue the sale of or limit the production of any Product, to terminate or limit deliveries of any Product, to alter the design or composition of any Product, and to add new Products to or delete existing Products from its product lines.

2. **Authorized Customers.** Retailer is authorized to sell Products to End Users. An "End User" is a purchaser of the Products who is the ultimate consumer of the Products and who does not intend to resell the Products to any third party. Retailer shall not sell or transfer Products to any person or entity Retailer knows or has reason to know intends to resell the Products. Retailer shall not sell or transfer a quantity of the Products to any individual greater than that typically purchased for personal use. Retailer shall not sell, ship, invoice, or promote the Products outside the United States of America without SoHo Modern's prior written consent.

3. **Online Sales.** Retailer is authorized to advertise and sell Products through Permissible Public Websites in accordance with the terms herein. A "Permissible Public Website" is a website or mobile application that:

- (i) is operated by Retailer in Retailer's legal name or registered fictitious name;
- (ii) conspicuously states Retailer's legal name, mailing address, telephone number, and email address;
- (iii) does not give the appearance that it is operated by SoHo Modern or any third party; and
- (iv) is operated in compliance with the terms and conditions set forth in the Online Sales Guidelines, attached hereto as Exhibit A, as SoHo Modern may amend from time to time.

¹ The SoHo Modern family of products includes, but is not limited to, Wagberry, Dogphora, Grrrlpup, Squeakify, Luxebone, and Brooklyn Petfoods.

Retailer shall not advertise or sell Products on or through any website, online marketplace, mobile application, or other online forum other than a Permissible Public Website without the prior written consent of SoHo Modern. This prohibition includes sales on any online marketplace, including, but not limited to, Amazon, eBay, Jet, Chewy, or Walmart Marketplace. SoHo Modern reserves the right to terminate, at any time and in its sole discretion, its approval for Retailer to market and sell Products on the Permissible Public Websites, and Retailer must cease all such marketing and sales on the Permissible Public Websites immediately upon notice of such termination. The Terms supersede any prior agreement between SoHo Modern and Retailer regarding the sale of the Products online.

4. **Sales Practices.** Retailer shall conduct its business in a reasonable and ethical manner at all times and shall not engage in any deceptive, misleading or unethical practices or advertising at any time. Retailer shall not make any warranties or representations concerning the Products except as expressly authorized by SoHo Modern. Retailer shall comply with any and all applicable laws, rules, regulations, and policies related to the advertising, sale, and marketing of the Products. Retailer shall represent the Products in a professional manner and refrain from any conduct that is or could be detrimental to the reputation of SoHo Modern.

5. **Product Care, Customer Service, and Other Quality Controls.**

(a) Retailer shall comply with all instructions provided by SoHo Modern regarding the storage, handling, shipping, disposal, or other aspect of the Products, including instructions provided on Product labels. Retailer shall store Products in a cool, dry, pest-controlled place, away from direct sunlight.

(b) Retailer shall sell Products in their original packaging. Relabeling, repackaging (including the separation of bundled Products or the bundling of Products), and other alterations to Products or their packaging are not permitted. Retailer shall not remove, translate, or modify the contents of any label or literature on or accompanying the Products. Retailer shall not tamper with, deface, or otherwise alter any serial number, UPC code, batch or lot code, or other identifying information on Products or their packaging.

(c) Retailer shall not represent or advertise any Product as “new” that has been returned open or repackaged. For treat products, Retailer shall not resell any product that has been returned open.

(d) Promptly upon receipt of the Products, Retailer shall inspect the Products and their packaging for damage, defect, broken seals, evidence of tampering, or other nonconformance (a “Defect”). If any Defect is identified, Retailer must not offer the Product for sale and must promptly report the Defect to SoHo Modern at support@sohomodern.com.

(e) Retailer shall inspect its inventory regularly for expired or soon-to-be expired Products and shall remove them from inventory. Retailer shall not sell any Products that are expired or within 60 days of expiration. Retailer shall destroy or dispose of expired or soon-to-be expired Products in accordance with instructions provided by SoHo Modern.

(f) Retailer shall be familiar with the special features of all Products marketed for sale and must obtain sufficient Product knowledge to advise customers on the selection and safe use of the Products, as well as any applicable warranty, guarantee, or return policy. Retailer must be available to respond to customer questions and concerns both before and after sale of the Products and should endeavor to respond to customer inquiries promptly.

(g) Retailer shall cooperate with SoHo Modern with respect to any Product tracking systems that may be implemented from time to time.

(h) Retailer shall cooperate with SoHo Modern with respect to any Product recall or other consumer safety information dissemination efforts.

(i) Retailer shall report to SoHo Modern its fictitious names (DBAs), if any, and shall keep SoHo Modern apprised of any changes to its contact information. Retailer is only authorized to purchase Products from SoHo Modern using its legal name or DBAs that have been reported to SoHo Modern.

(j) Retailer shall report to SoHo Modern and assist in investigating any customer complaint or adverse claim regarding the Products of which it becomes aware.

(k) Retailer shall cooperate with SoHo Modern in the investigation and resolution of any quality or customer service issues related to Retailer's sale of the Products, including disclosing information regarding Product sources, shipment, and handling.

6. **Intellectual Property.** Retailer is granted a limited, non-exclusive, non-transferable, revocable license to use the SoHo Modern IP solely for purposes of marketing and selling the Products as set forth herein. The "SoHo Modern IP" includes the trademarks, names, logos, service marks, trade dress, copyrights, and other intellectual property related to Wagberry, Dogphora, Grrrlpup, Squeakify, Luxebone, and Brooklyn Petfoods brand products as well as any brands later acquired by SoHo Modern and other brands in which SoHo Modern has the necessary rights to sublicense to Retailer. The license granted to Retailer will cease upon termination of Retailer's status as an Authorized Retailer. All goodwill arising from Retailer's use of the SoHo Modern IP shall inure solely to the benefit of SoHo Modern or its licensors. Retailer's use of the SoHo Modern IP shall be in accordance with any guidelines that may be provided by SoHo Modern from time to time ("Brand Guidelines") and must be commercially reasonable as to the size, placement, and other manners of use. SoHo Modern reserves the right to review and approve, in its sole discretion, Retailer's use or intended use of the SoHo Modern IP at any time, without limitation. Retailer shall not create, register, or use any domain name or any mobile application that contains any SoHo Modern product name or any trademark owned by or licensed to SoHo Modern, nor a misspelling or confusingly similar variation of any SoHo Modern product name or any trademark owned by or licensed to SoHo Modern.

7. **Termination.** In addition to all other available remedies, if Retailer breaches any of the Terms, SoHo Modern reserves the right to terminate the Terms and Retailer's status as an Authorized Retailer with written or electronic notice. Upon termination of a Retailer's status as an Authorized Retailer, Retailer shall immediately cease (i) selling the Products; (ii) acting in any manner that may reasonably give the impression that Retailer is an Authorized Retailer of SoHo Modern Products or has any affiliation whatsoever with SoHo Modern; and (iii) using all SoHo Modern IP.

8. **Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN THE WARRANTY SECTION OF THE DOCUMENTS ACCOMPANYING THE PRODUCTS OR IN PRODUCT LITERATURE FURNISHED BY SOHO MODERN CONTAINING PRODUCT WARRANTIES, AS IN EFFECT FROM TIME TO TIME (THE "STATEMENT OF WARRANTY"), SOHO MODERN MAKES NO REPRESENTATION OR WARRANTY TO RETAILER OF ANY NATURE OR KIND REGARDING

THE PRODUCTS. TO THE FULLEST EXTENT PERMITTED BY LAW, SOHO MODERN DISCLAIMS ALL OTHER WARRANTIES TO RETAILER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM OF TRADE OR OTHERWISE. SOHO MODERN'S SOLE OBLIGATION AND LIABILITY TO RETAILER IN RESPECT OF ITS WARRANTY AS SET FORTH IN THE STATEMENT OF WARRANTY SHALL BE, AT ITS OPTION, TO REPAIR OR REPLACE THE RELEVANT PRODUCT AT ITS COST.

9. **Indemnification.** Except as otherwise provided herein, Retailer shall, and hereby does, indemnify, defend, save and hold harmless, SoHo Modern, and its directors, officers, employees, members, shareholders, partners, counsel, auditors, accountants, agents, advisors and all other representatives and each of the heirs, executors, successors and assigns of any of the foregoing, from and against any and all losses, liabilities, obligations, actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law, admiralty, or equity, known or unknown of any kind to the extent they are caused by, arise from, or are incurred in connection with (a) any breach of, or failure to perform, any term, covenant or condition in the Terms by Retailer, or (b) the negligence or willful misconduct of Retailer or its officers, employees, agents or contractors.

10. **Limitation of Liability.** SOHO MODERN SHALL NOT BE LIABLE TO RETAILER UNDER ANY CIRCUMSTANCES FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, LOSS OF SALES, OR LOSS OF PROFITS. SOHO MODERN'S AGGREGATE LIABILITY FOR ANY DAMAGE OR THAT OF ANY THIRD PARTY CAUSED BY ITS PRODUCTS OR OTHERWISE BY IT ACTS OR OMISSIONS, SHALL NOT EXCEED, IN RESPECT OF ANY CLAIM ARISING OUT OF A SINGLE EVENT OR A SERIES OF CONNECTED EVENTS, THE AGGREGATE AMOUNT PAYABLE BY RETAILER TO SOHO MODERN DURING THE SIX (6)-MONTH PERIOD IMMEDIATELY PRECEDING THE CAUSATION OF ANY DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL APPLY HOWEVER THE LOSS OR DAMAGE IS CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, BREACH OF CONTRACT, DELAY OF PERFORMANCE, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE, WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES, AND REGARDLESS OF WHETHER THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

11. **Availability of Injunctive Relief.** If there is a breach or threatened breach of Sections 2 (Authorized Customers), 3 (Online Sales), 4 (Sales Practices), 5 (Product Care, Customer Service, and Other Quality Controls), 6 (Intellectual Property), or 7 (Termination), it is agreed that SoHo Modern will have no adequate remedy in money or other damages at law. Accordingly, SoHo Modern shall be entitled to injunctive relief and other equitable remedies; provided, however, no specification in the Terms of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of the Terms. No failure, refusal, neglect, delay, waiver, forbearance, or omission by SoHo Modern to exercise any right(s) herein or to insist upon full compliance by Retailer with Retailer's obligations herein shall

constitute a waiver of any provision herein or otherwise limit SoHo Modern's right to fully enforce any or all provisions and parts thereof.

12. **Miscellaneous.**

(a) **Modification.** SoHo Modern reserves the right to update, amend, or modify the Terms at any time. Unless otherwise provided, such amendments will take effect immediately and Retailer's continued use, advertising, offering for sale, or sale of the Products, use of the SoHo Modern IP, or use of any other information or materials provided by SoHo Modern to Retailer will be deemed Retailer's acceptance of the amendments.

(b) **Force Majeure.** SoHo Modern shall not be deemed to be in breach hereof or liable to Retailer in any manner on account of any delay in delivery or other performance caused in whole or in part by, or otherwise materially related to, the occurrence of any contingency beyond SoHo Modern's control, including without limitation, fire, flood, terrorist threats or acts, riot or other civil unrest, war, invasion, hostilities, strikes or other labor disputes, embargoes or transportation delays, shortage of labor, inability to secure fuel, energy, materials, supplies or power at reasonable prices from regular sources or on account of shortages thereof, delays or failures of any of SoHo Modern's suppliers to deliver, acts of God or of a public enemy, the effect of any existing or future laws, acts or regulation of any applicable federal, state or local government, or any other commercial impracticability.

(c) **Severability.** If any provision of the Terms is held contrary to law, the remaining provisions shall remain valid.

(d) **Survival.** The following provisions shall survive the termination of the Terms: Section 6 (Intellectual Property); Section 9 (Indemnification); Section 12(d) (Survival); Section 12(e) (Governing Law and Venue); Section 12(f) (Confidentiality); and Section 12(g) (Waiver of Jury Trial).

(e) **Governing Law and Venue.** The Terms and any dispute arising under them shall be governed by, construed, and enforced in accordance with the laws of the State of New York, without regard to its choice of law rules. In the event of a dispute over the terms or performance under the Terms, Retailer expressly submits to personal jurisdiction and venue in the federal or state courts in Kings County, New York.

(f) **Confidentiality.** The Terms constitute confidential, proprietary information of SoHo Modern and shall not be used for any purpose other than the authorized advertising and sale of the Products nor disclosed to any third party without the prior written consent of SoHo Modern.

(g) **Waiver of Jury Trial.** **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TERMS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PARTIES ACTIONS IN THE NEGOTIATIONS, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.**

EXHIBIT A
SOHO MODERN ONLINE SALES GUIDELINES

Retailer's approval to sell SoHo Modern Products on Permissible Public Websites is conditioned on adherence to the following terms and conditions:

1. The Permissible Public Websites must not give the appearance that they are operated by SoHo Modern or any third party.

2. Anonymous sales are prohibited. Retailer's full legal name or registered fictitious name, mailing address, email address, and telephone contact must be stated conspicuously on the Permissible Public Websites and must be included with any shipment of Products from the Permissible Public Websites or in an order confirmation sent at the time of purchase.

3. At SoHo Modern's request, Retailer will reasonably cooperate in demonstrating and/or providing access to, and copies of, all web pages that comprise the Permissible Public Websites.

4. The Permissible Public Websites shall have a mechanism for receiving customer feedback and Retailer shall use reasonable efforts to address all customer feedback and inquiries received in a timely manner. Retailer agrees to provide copies of any information related to customer feedback (including any responses to customers) to SoHo Modern for review upon request. Retailer agrees to cooperate with SoHo Modern in the investigation of any negative online review associated with Retailer's sale of the Products and to use reasonable efforts to resolve any such reviews.

5. The Permissible Public Websites shall be in compliance with all applicable privacy, accessibility, and data security laws, regulations, and industry standards.

6. Retailer shall be responsible for all fulfillment to its customers who order Products through Permissible Public Websites, any applicable taxes associated with such purchases of Products, and any returns of Products.

7. Unless separately authorized by SoHo Modern in writing, Retailer shall not use any third-party fulfillment service to store inventory or fulfill orders for the Products. Under no circumstances shall Retailer fulfill orders in any way that results in the shipped Product coming from stock other than Retailer's.

8. In marketing the Products on the Permissible Public Websites, Retailer shall only use images of Products either supplied by or authorized by SoHo Modern and shall keep all Product images and descriptions up to date. Retailer shall not advertise Products not carried in inventory.