

# CONSIGNMENT TERMS

IF NOT SOONER TERMINATED AS PROVIDED HEREIN, THIS AGREEMENT RENEWS AUTOMATICALLY FOR SUCCESSIVE ONE-YEAR TERMS ON THE FINAL DAY OF THE MONTH THAT IS ONE YEAR FROM THE DATE THE CONSIGNOR EXECUTES THIS AGREEMENT (THE "EFFECTIVE DATE" AND THE "TERM"). THESE TERMS CAN CHANGE AT ANY TIME WITHOUT PRIOR NOTICE FOR ANY REASON.

## 1. RECITALS

The Rare Zebra is engaged in the marketing and sale of designer and luxury designer clothing, shoes, jewelry, accessories, handbags, and vintage items older than 1970;

Consignor owns or controls and has the right to sell certain items, described and itemized on The Rare Zebra online and other forms, or collected from Consignor (the "**Consignor**") by an employee of The Rare Zebra as part of its consignor service (collectively, the "**Property**").

Consignor wishes to sell that Property.

Consignor desires that the Property be sold on consignment by The Rare Zebra and The Rare Zebra wishes to sell that Property on behalf of Consignor. This means that Consignor transfers possession but not ownership of the Property to The Rare Zebra, subject to these Consignment Terms (the "**Agreement**").

Therefore, in consideration of the mutual premises and covenants contained in this Agreement, the receipt and sufficiency of which is acknowledged, and expressly subject to the provisions of The Rare Zebra Terms of Service (see The Rare Zebra website at [www.therarezebra.com](http://www.therarezebra.com)), which terms may be amended from time to time at The Rare Zebra sole discretion), the parties agree as follows:

## 2. DELIVERY OF PROPERTY; RISK OF LOSS; INSURANCE

Consignor makes the Property available to The Rare Zebra on a consignment basis and The Rare Zebra accepts the Property from Consignor on a consignment basis only. All risk of loss or damage of the Property will pass to The Rare Zebra only when The Rare Zebra takes physical possession of the Property. Consignor retains all risk of loss or

damage to the Property until that time; provided, however, that if Consignor uses The Rare Zebra approved method of shipment to The Rare Zebra, specifically using The Rare Zebra label and current integrated shipping arrangement (the "**Label**"), then Thriving Threads will insure or arrange for a third party to insure the Property against loss or damage in transit, up to a maximum of \$10,000 per shipment. A "shipment" means items of Property shipped together under one Label.

Subject to the foregoing, The Rare Zebra shall insure the Property in such amounts and against such risks as to which such goods are customarily insured, including insurance for theft and damage while in The Rare Zebra possession, and shall provide evidence of such insurance coverage to Consignor as and when requested. If the Property is damaged or lost while in The Rare Zebra possession, then a Property Sale, as defined below at Section 7, will be deemed to have occurred and The Rare Zebra will reimburse Consignor in the amount of Consignor's Commission (also defined below), based on the damaged or lost Property's Net Selling Price(s), as defined at Section 8, and as determined solely by The Rare Zebra.

**This remedy shall constitute the sole remedy and entire recourse of Consignor against The Rare Zebra and is in lieu of any other remedy available as a matter of law or equity.**

### **3. ACCEPTANCE OF PROPERTY; CONDITION OF ITEMS**

The Rare Zebra only accepts Property: (1) it determines in its sole discretion to be in very good to excellent condition; (2) that is listed in its Brands of Accepted Designers (see The Rare Zebra website at [www.therarezebra.com/designerlist](http://www.therarezebra.com/designerlist) for items currently being accepted); (3) it determines in its sole discretion to be authentic; and (4) that is made available to The Rare Zebra in full compliance with the representations and warranties Consignor makes pursuant to this Agreement ("**Acceptance**"). Upon receipt, The Rare Zebra will evaluate the Property to determine its authenticity, quality and value. Condition issues will affect the valuation. Property that does not meet The Rare Zebra quality standards will not be Accepted and will be returned to Consignor at Consignor's expense (see "**Unauthenticated Items**" and "**Consignment Period and Return of Property**" below). The consignor has the option to have the unaccepted consignment property returned to them at the cost of the consignor, or the

consignor can elect to have non accepted consignment items, donated to a local charity. If The consignor chooses to have the unaccepted consignment property donated to a local charity, The Rare Zebra will make every effort to obtain a tax deductible receipt for the consignor.

#### **4. UNAUTHENTICATED, COUNTERFEIT, OR STOLEN ITEMS**

**The Rare Zebra takes counterfeit very seriously. Consignor is responsible for ensuring the authenticity of all items that Consignor offers or provides for consignment.** In the event The Rare Zebra determines it cannot confirm the authenticity of any item of Property offered or provided for consignment, it shall have the right in its sole discretion to refuse to Accept the item. In the event that The Rare Zebra determines at any time that an item of Property is counterfeit, The Rare Zebra shall notify Consignor that it has made such determination. **Consignor acknowledges and agrees that any item The Rare Zebra determines to be counterfeit will not be returned to Consignor and will be destroyed.** See [www.therarezebra.com/authenticity](http://www.therarezebra.com/authenticity).

Consignor acknowledges and agrees that The Rare Zebra is subject to laws and regulations relating to claims that consigned items have been stolen. The Rare Zebra takes reports of stolen goods seriously and will cooperate with law enforcement in all investigations. If The Rare Zebra determines the Consignor knowingly attempted to consign known stolen goods, the Consignor's account will be permanently removed, and the Consignor will forfeit all Items, and monies earned from those items. The Rare Zebra will report the Consignor to local authorities, as well as major consignment retailers.

#### **5. CONSIGNMENT PERIOD AND RETURN OF PROPERTY**

The "**Consignment Period**" for an item of Property begins on the Effective Date and ends 365 days thereafter, whether or not such Consignment Period extends beyond the term of this Agreement. Within 30 calendar days during the Consignment Period, and subject to this provision, Consignor may request The Rare Zebra return all or some of the Property, upon written notice to The Rare Zebra and so long as the item of Property has not already been sold (the "**Return Request**"). Upon such Return Request, The Rare Zebra will make its best efforts to remove the item of Property from the site before it is sold, but can make no such guarantees.

(a) If the Return Request is made **within 30 days** from Acceptance, as defined above, the Property will be returned within 30 days of the Return Request. The Rare Zebra reserves the right to pass on all costs of such returns to the Consignor and in such case, all costs of return shall be deducted as available from Consignor's pending Commissions; where such pending Commissions are not available, The Rare Zebra shall have no obligation to return such Property unless and until Consignor has provided for the cost of return shipping at its sole expense.

Additionally, Consignor acknowledges and agrees if the Consignor requests the return of Property within this first 30 days after Acceptance, Thriving Threads reserves the right to charge Consignor a fee of \$100 per item valued at \$5,000 or higher, or \$15 per every other item of Property, this fee reflects the up-front costs to The Rare Zebra of storing, cataloging and photographing the Property in preparation for sale.

(b) If the Return Request is made **more than 30 days** after acceptance, the Property will be returned within 30 days of Return Request and all costs of returning the Property to the Consignor will be borne by The Rare Zebra with the exception of shipping costs which will be charged to the consignor.

## **6. EFFORTS TO SELL; PRICE**

Subject to Consignor's performance of its obligations under this Agreement, The Rare Zebra will display on its site and make commercially reasonable efforts to sell the Property. Consignor acknowledges and agrees that:

(a) The Rare Zebra in its sole discretion will determine the initial selling price for the Property (the "**Initial Sale Price**"), based on its evaluation of the Property together with its determination of the current market price for each specific item of Property.

(b) In order to market and promote the sale of the item, The Rare Zebra reserves the right to allow an immediate site-wide 20% discount to apply, which will affect the Initial Sale Price.

(c) The Rare Zebra may offer additional discounts and promotions during the Consignment Period, at its sole discretion and without notice to Consignor as a means to efficiently market and sell the Property, unless The Rare Zebra and Consignor have otherwise agreed in writing to a specific price at which an item must be sold.

## 7. TITLE TO PROPERTY

Title to and ownership of the Property will remain with Consignor until a Property Sale occurs. A "**Property Sale**" shall be deemed to have occurred where an item of Property is:

- (a) Sold by The Rare Zebra and not returned to The Rare Zebra within the period specified in The Rare Zebra then-current Return Policy (see [www.therarezebra.com/returns](http://www.therarezebra.com/returns));
- (b) Lost or stolen from The Rare Zebra stock on hand;
- (c) Damaged or destroyed while in The Rare Zebra possession.

## 8. PAYMENT AND COMMISSIONS

Upon a Property Sale, the net selling price upon which all Commissions are based shall equal the price of the item of Property sold, less applicable discounts, excluding taxes and shipping (the "**Net Selling Price**").

Consignor acknowledges and agrees it will receive the following Commission (as defined below, the "**Commission**") based on the **Net Selling Price** of an item of Property:

- (a) A Commission in an amount equal to 50% of the **Net Selling Price** where items sold total \$2,999 or less during the Commission Period, as defined below;
- (b) A Commission in an amount equal to 60% of the **Net Selling Price** where items sold total between \$3000-\$4,999 or during the Commission Period;
- (c) A Commission in an amount equal to 70% of the Net Selling Price where items sold total \$5,000 or more
- (d) The 70% Commission rate will reset to 50% on the one-year anniversary of the first Property Sale under this Agreement (the "**Commission Period**"); however,
- (e) For Consignors where the total Net Selling Price for all items sold during the Commission Period reaches \$6,000 or more, the 70% Commission rate for all items consigned during the Commission Period of the applicable Agreement shall extend an additional 12 months.

The Rare Zebra may at any time and in its sole discretion temporarily increase the Commission from time to time for promotional reasons. The

Commission shall be Consignor's sole compensation under this Agreement.

The Rare Zebra begins processing Commission payments on the 1st and the 15th day of every month for the sale period beginning on the 14th of previous month to the last day of the previous month, and from the 1st day to the 13th day of the current month. For example, payments processed on April 15th would cover the sale period from April 1 to the 13th. Such payments will be made to the Consignor by physical check, Venmo, or PayPal. The timing of processing and delivering Commission payments will vary by the payment method selected by Consignor but payment processing will typically take at least three to five business days to complete and issue to Consignor. Please allow 7-10 business days for delivery of a check. For checks being issues under \$25, there is a \$5 convenience and handling fee.

In the event of any dispute between the Parties, The Rare Zebra shall have no obligation to pay any Commission or other amount otherwise due to Consignor, including without limitation amounts unrelated to the dispute, unless and until such dispute is resolved. The Rare Zebra shall be entitled to withhold any Commissions (including any otherwise due for items of Property not then subject to the dispute) in full or partial satisfaction of any amounts due to The Rare Zebra.

## **9. TERMINATION**

Either Party may terminate this Agreement at any time, for any reason. Termination shall be effective when either Party serves written notice thereof on the other Party. Costs listed above under Section 5, Consignment Period and Return of Property, will apply.

## **10. NO ASSIGNMENT**

Consignor may not assign this Agreement or any interest herein without The Rare Zebra prior written consent and any prohibited assignment shall be void.

## **11. NO PROPERTY WARRANTIES**

The Rare Zebra does not make any representation or warranty either express or implied about any item of Property, except to the extent a warranty is required by law and cannot be disclaimed.

**The Rare Zebra DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, RELATING TO ITS SERVICES OR ACTIVITIES HEREUNDER. IN NO EVENT WILL The Rare Zebra LIABILITY HEREUNDER EXCEED THE AMOUNT IT HAS ACTUALLY RECEIVED AS A RESULT OF SELLING CONSIGNOR'S PROPERTY HEREUNDER. THE FOREGOING DISCLAIMER AND LIMITATION IS A FUNDAMENTAL PART OF THE BASIS OF The Rare Zebra BUSINESS, AND The Rare Zebra WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT SUCH DISCLAIMER AND LIMITATION.**

## **12. CONSIGNOR'S REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION**

Consignor hereby represents and warrants that it has good and marketable title to each item of Property and has the right to consign and sell the Property, none of which is subject to any liens or other encumbrances, and further represents and warrants that the Property does not infringe upon or violate any trademark, copyright, or other proprietary right of any third party, any state or federal law, or any administrative regulation. Consignor hereby agrees to indemnify and hold The Rare Zebra harmless from all damages, suits, litigation, awards, and costs, including but not limited to attorneys' fees and costs, as a result of or arising out of in any way The Rare Zebra display or sale of the Property for any reason whatsoever, including but not limited to civil or criminal suits over authenticity, legality, ownership, infringement of copyright or trademark, or any other claim or litigation.

## **13. GOVERNING LAW**

This Agreement is governed by the laws of the State of California, without regards to its conflict-of-law provisions. The Parties hereby irrevocably consent to the jurisdiction of the courts of Cincinnati, Ohio, and Hamilton County, Ohio with respect to any matter arising under this Agreement.

## **14. ENTIRE AGREEMENT**

This Agreement sets forth the final, complete and exclusive agreement of the Parties regarding the subject matter hereof, and terminates and supersedes all prior understandings or agreements on the subject matter hereof. The Rare Zebra may, without notice, modify this Agreement at

anytime, and without notice, though The Rare Zebra will make every concerted effort to contact all parties involved.

#### **15. NO IMPLIED WAIVER**

Any failure of either Party to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision herein.

#### **16. SEVERABILITY**

In the event any term of this Agreement is found by any court to be void or otherwise unenforceable, the remainder of this Agreement shall remain valid and enforceable as though such term were absent upon the date of its execution.

#### **17. SURVIVAL OF TERMS AFTER AGREEMENT ENDS**

Notwithstanding any other provision or general legal principles to the contrary, any provision of this Agreement that imposes or contemplates continuing obligations on a Party will survive the expiration or termination of this Agreement.

#### **18. HEADINGS**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.