



**KABINET SALON PRIVÉ [Owned by KABINET PRIVE SDN BHD (1010749-T)]**

120, Jalan Maarof Bangsar, 59000 Kuala Lumpur Malaysia

**1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement, unless the context otherwise requires:

Agreement	means, this Consignment Agreement (including the schedules and appendices), comprising of the Consignment Form and Appendix A or, as the case may be, the relevant agreement or document as amended, supplemented or novated from time to time or the relevant agreement or document, as the case may be, and includes a reference to any document which amends, waives, is supplemental to or novates the terms of this Agreement or, as the case may be, the relevant agreement or document;
Consignment Fee	means the fees payable to the Consignee as consideration for promoting and selling the Merchandise on the Platforms, which represents the Percentage of the Prevailing Price as stated in the Consignment Form;
Force Majeure	means, in relation to either party, any circumstances beyond the reasonable control of that party, including, without limitation to any Acts of God, explosion, flood, fire or accident, war, riot, strike, lock-out or other form or industrial action, as well as any of the following events that would affect normal operation of the Online Platform: <ol style="list-style-type: none"><li>1) Invasion or outbreak of computer virus, trojan, worm, logic bomb, hacker attacks;</li><li>2) Damage to the computer systems rendering the functions thereof paralyzed, disabled or unusable causing loss of information and records to the extent that the Consignee becomes unable to provide the sales service;</li><li>3) Interruptions caused by technological adjustment of the telecommunications service provider;</li><li>4) Acts, restrictions, regulations, by-laws, refusals to grant any licences or permissions, prohibitions or measures of any kind, including temporary shut down of the Online Platform by any government authority;</li><li>5) Any other reasons not attributable to the Consignee or its service provider;</li></ol>
Taxes	means any goods and services tax, value added tax or any similar tax (if any) properly chargeable thereon in any jurisdiction;
IP Rights	means any and all trade and service marks, patents, copyrights, design rights, (whether registered or not and all applications for any of the foregoing), database rights and rights in know-how, confidential information and other intellectual property rights of a similar or corresponding character whensoever and howsoever arising for the full term thereof and all renewals and extensions thereof which may now or in the future subsist in Malaysia and all other countries in the world
Merchandise	means the item(s) or merchandise(s) stipulated and identified in the Consignment Form;
Merchandise Exclusivity	means the period of exclusivity as stated in the Consignment Form;
Online Platform	means the online sale platform owned and operated by the Consignee including but not limited to "Kabinetprive.com";

Physical Platform	means the physical retail store located at 120, Jalan Maarof, Bangsar, 59000 Kuala Lumpur and/or any other physical retail store owned and/or operated by the Consignee which the Consignee has designated for the display and showcasing of Merchandise;
Platforms	means the Online Platform and Physical Platform and/or any platform that is owned / operated by the Consignee;
Prevailing Price	means the price of each Merchandise as set by the Consignor;
Restricted Information	means any information which is disclosed by one party to the other pursuant to or in connection with this Agreement (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such);
Selling Price	means the price of each Merchandise to be sold on the Platforms;
Term	means the period of three (3) months commencing from the date of this Agreement including any renewal and extension thereof; and
Territory	means Malaysia / Singapore.

## 1.2. Interpretation

- (a) Except where otherwise stated, any reference to any statutory provision includes a reference to any modification, extension or re-enactment thereof (whether made before or after the date hereof) for the time being in force and also includes a reference to all bye-laws, instruments, orders and regulations for the time being made thereunder or deriving therefrom.
- (b) Except to the extent that the context requires otherwise, references to the singular shall include references to the plural and vice versa.
- (c) Words denoting one gender include the other.
- (d) Words denoting persons include corporations and vice versa and also include their respective heirs, personal representatives, successors in title or permitted assigns, as the case may be.
- (e) References to "include" and "including" shall be construed without limitation.
- (f) Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.
- (g) Where a word or phrase indicates an exception to any of the provisions of this Agreement and a wider construction is possible, such word or phrase is not to be construed ejusdem generis with any foregoing words or phrases and where a word or phrase serves only to illustrate or emphasise any of the provisions of this Agreement, such word or phrase is not to be construed, or to take effect as limiting the generality of such provision.
- (h) Any reference to "pay", or cognate expressions, includes payments made in cash or effected through inter-bank transfer to the account of the payee, giving the payee access to immediate available, freely transferable, cleared funds.
- (i) Any reference to "writing", or cognate expressions, includes any communication effected by telex, cable, facsimile transmission or other comparable means.
- (j) Unless otherwise provided, references to "a day" are to be construed as references to a business day which shall mean a day on which banks are open for business in Kuala Lumpur.
- (k) If any period of time is specified from a given day, or the day of a given act or event, it is to be calculated exclusive of that day and if any period of time falls on a day which is not a business day, then that period is to be deemed to only expire on the next business day.

1.3. **Headings**

The table of contents, headings and sub-headings in this Agreement are inserted merely for convenience of reference and shall be ignored in the interpretation and construction of any of the provisions contained herein.

1.4. **Language**

English is the governing language of this Agreement and shall prevail over any translations that shall be made of this Agreement. All correspondence, notices or other documents required or permitted hereunder may be drawn up in English and drawings and diagrams shall be annotated in English.

1.5. **Recitals**

The Recitals, schedules and appendices of and to this Agreement shall have effect and be construed as an integral part of this Agreement, but in the event of any conflict or discrepancy between any of the provisions of this Agreement, such conflict or discrepancy shall, for the purposes of the interpretation and enforcement of this Agreement, be resolved by giving the provisions contained in the Clauses of this Agreement priority and precedence over the provisions contained in the Recitals, schedules and appendices of and to this Agreement.

2. **APPOINTMENT OF CONSIGNEE**

2.1 The Consignor hereby appoints the Consignee as its EXCLUSIVE consignee for the sale of the Merchandise on consignment sale or return basis on the Platforms throughout the Term, and the Consignee hereby agrees to act in that capacity, upon the terms and subject to the conditions of this Agreement.

2.2 Throughout the Term, the Consignor hereby agrees and undertakes with the Consignee that during the relevant Merchandise Exclusivity Period the Consignor shall not:

- (a) appoint any other person, firm or company as a consignee, distributor or sales agent for the Merchandise in Malaysia or anywhere in the world; or
- (b) supply to any other person, firm or company anywhere in the world the Merchandise, whether for use or resale by any means.

2.3 The Consignee shall promote and make available for sale the Merchandise through the Platforms.

3. **MERCHANDISE**

3.1 The Consignor shall provide an accurate description of the Merchandise to be displayed on the Platforms and the Merchandise must conform in all respects with the specifications and descriptions stated.

3.2 The Consignor shall make available to the Consignee for inspection the Merchandise on or prior to the date of this Agreement and the Consignee is entitled to inspect the Merchandise and reject Merchandise which do not conform completely to the specification and description as stated or to the requirement of fitness for purpose and merchantable quality.

3.3 Upon signing this Agreement, the Consignor shall deliver the Merchandise to the Consignee and the Consignee will retain possession of the Merchandise during the Term, unless otherwise agreed to in writing by parties. Where the Consignor retains possession of the Merchandise, the Consignee reserves the right to inspect the Merchandise periodically and reject the Merchandise and/or remove the Merchandise from the Platforms, if the Merchandise has been altered, tampered, damaged and/or is no longer in the same condition as per the last date it was inspected.

3.4 All costs of despatch or shipment of the Merchandise, from the Consignor to the Consignee and from the Consignee to the end-customers shall be borne by the end-customers or the Consignor.

3.5 At the requests of the Consignee or the end-customers, the Consignor shall make available and/or authorize the Consignee to make available the Merchandise for viewing at the premises of the Consignee or such other venue as may be mutually agreed, at the costs of the Consignor.

- 3.6 Title of the Merchandise shall at all times remain with the Consignor unless and until one of the following conditions are met:-
- (a) The Merchandise is sold by the Consignee to the end-customer and the Consignee receives full payment of the Selling Price of the Merchandise from the end-customer; or
  - (b) The Consignee agrees to purchase the Merchandise from the Consignor and has made full payment of the Prevailing Price to the Consignor.
- 3.7 All risks, including of loss of or damage, to any consignment of the Merchandise shall remain with the Consignor until the Merchandise is sold and delivered to the end-customer, whether or not the Consignee is at any time in possession or comes into possession of the Merchandise, save for and except in the instance where the Consignee has purchased the Merchandise outright from the Consignor, taken delivery of the Merchandise and made full payment thereof to the Consignor whereupon risks shall pass to the Consignee. The Consignor shall at all times ensure the Merchandise is covered with adequate insurance and shall indemnify and keep the Consignee indemnified against any claims, losses or damages in connection with the loss or damage of the Merchandise howsoever arising, save and except caused by gross negligence or wilful default of the Consignee.
- 3.8 The Consignee shall not be liable to the Consignor, whether in contract, tort (including negligence), breach of statutory duty or otherwise for any (i) pure economic loss; (ii) loss of actual or anticipated profits; (iii) loss of business; (iv) loss of anticipated savings; (v) loss of business opportunity; (vi) loss of reputation, depletion of brand value, loss of goodwill or like loss; (vii) indirect, and consequential, arising out of or in connection with loss or damage to the Merchandise, save and except caused by gross negligence or wilful default of the Consignee.
- 3.9 If, at the end of the Term, the Merchandise remains unsold, then the Consignee shall return the Merchandise to the Consignor. At no time shall the retention of the Merchandise by the Consignee be deemed to be a sale of the Merchandise by the Consignor to the Consignee, save for and except in the case of a sale as stipulated in Clause 3.6 above.

#### 4. OBLIGATIONS OF CONSIGNOR

- 4.1 The Consignor shall be under an obligation to ensure that the Merchandise are available for sale during the Term in such range, quantity and at such specifications as may have been agreed with the Consignee from time to time. The Consignor shall not be at liberty to alter or change any of such terms as agreed with the Consignee without the Consignee's prior written agreement during the Merchandise Exclusivity Period and shall not dispose of the Merchandise unless otherwise in accordance with this Agreement.
- 4.2 The Consignor shall at all times ensure that the Merchandise is unencumbered and shall not remove the Merchandise from the possession of the Consignee unless otherwise in accordance with this Agreement.
- 4.3
- (a) The Consignee shall set the Selling Price by adding its Consignment Fee upon the Prevailing Price of the Merchandise set by the Consignor. The Consignor shall ensure that the Prevailing Price of the Merchandise is competitive and shall remain competitive at all times (even in comparison to the other similar merchandise(s) or item(s) of the same specification and description available for sale elsewhere).
  - (b) The Consignor shall conduct a price review on the Prevailing Price every three (3) months, and shall consider a price reduction if a particular Merchandise or type of Merchandise remains unsold or is experiencing slow sale.
  - (c) Without prejudice to any other rights and remedies of the Consignee hereunder, the Consignee shall have the right to require the Consignor to review and to revise and/or reduce the Prevailing Price set for each Merchandise within twenty four (24) hours in the event the Consignee has discovered by whatever means that the Selling Price of the Merchandise is not, in the Consignee's view, competitive or no longer competitive, and the Consignor shall be obliged to revise and/or reduce the pricing of the relevant Merchandise accordingly to ensure its competitive pricing on the Platforms unless written justification or sufficient product distinction or differentiation together with all relevant information are furnished to the Consignee to its satisfaction, failing which the Consignee shall be entitled at its sole discretion to unilaterally adjust the Selling Price and Prevailing Price to match the lower price of such similar merchandise or remove the Merchandise from the Platforms.
- 4.4 Subject as herein provided, the Consignor warrants to the Consignee that:

- (a) all Merchandise consigned hereunder will be of merchantable quality, fitness for purpose and shall comply with any specification agreed for them;
- (b) all Merchandise consigned hereunder are authorized or genuine products and do not infringe any intellectual property rights of a third party;
- (c) the Consignor has the legal and beneficial title and is in legal possession of all the Merchandise;
- (d) the Consignor warrants that it has the necessary authority to authorise the use of the IP Rights by the Consignee, either as the registered proprietor and common law owner of the IP Rights, or as a licensee of the IP rights with rights of sub-license in connection with the promotion or sale of the Merchandise on the Platforms and all other promotional materials or media of the Consignee;
- (e) it is not aware of any rights of any third party which would or might render the sale of the Merchandise, or the use of any of the IP Rights on or in relation to the Merchandise, unlawful.

4.5 The Consignor shall comply with and hereby agrees to honour the Consignee's Return Policy with the end-customers, and the Consignor shall make a full replacement of the Merchandise or make a full refund of the payment of the price of the Merchandise paid by the end-customer, at the election of the Consignee, as well as to bear all associated costs in respect thereof in the event of any breach of the warranties in clause 4.4.

4.6 In the event of any breach of the Consignor's warranty in clause 4.4 (whether by reason of defective materials, production faults or otherwise), the Consignor shall be liable to indemnify and keep the Consignee fully indemnified against any claims, losses or damages as may be suffered or incurred by the Consignee in relation thereto.

4.7 The Consignor also warrants that it is in compliance with all legal requirements, conditions, rules and regulations imposed by the relevant authorities including but not limited to the tax authorities and shall keep the Consignee fully indemnified against any claims, actions and/or penalties arising as a result of non-observance of the said legal requirements.

4.8 The Consignor shall be subject to such additional terms or obligations as may be stated in the Consignment Form.

## 5. OBLIGATIONS OF CONSIGNEE

5.1 The Consignee shall use all commercially reasonable endeavours to advertise and make available for sale the Merchandise on the Platforms PROVIDED THAT the Consignee shall have sole discretion as to the manner and sequence which such advertisement or Merchandise information may appear on the Online Platform and/or arrangement or manner of display on the Physical Platform.

5.2 The Consignee shall handle all customers' feedback regarding the Merchandise, and promptly notify the Consignor in respect of any return of any Merchandise sold due to defects or breach of warranties under Clause 4.4 hereof.

## 6. CONSIGNMENT FEE AND PAYMENT

6.1 The Consignor hereby agrees that for each and every Merchandise advertised on the Platforms and sold by the Consignee, the Consignee shall be entitled to a Consignment Fee.

6.2 Each Merchandise sold during the Merchandise Exclusivity Period will be deemed sold by the Consignee, notwithstanding the sale may take place at the premises of the Consignor or any dealings may have taken place directly between the Consignor and the customer.

6.3 In the event the Selling Price of a Merchandise is lowered by the Consignee pursuant to the provisions of Clause 4.3(c), the Consignment Fee shall nonetheless be based on the pre-adjusted Selling Price which is higher notwithstanding the Merchandise is sold at the lower adjusted Selling Price.

6.4 Payment for the Merchandise shall be collected by the Consignee. The Consignee shall remit to the Consignor on a monthly basis on or before the last day of every month, all accumulated proceeds of sale in relation to the sale of all Merchandises concluded up to the 15<sup>th</sup> day of that month, less all fees payable to the Consignee and all other expenses and Taxes which the Consignor is liable to bear pursuant to the terms hereunder.

- 6.5 Where, under, this Agreement, Taxes are chargeable or become chargeable on any sale of any Merchandise by the Consignor to the End-customer, the Consignor shall bear the proportion of Taxes chargeable on the Selling Price of the Merchandise.
- 6.6 In the event any sale proceeds of Merchandise is paid to or received by the Consignor directly from the customer for any reason whatsoever, the Consignor shall remit to the Consignee on a monthly basis on or before the last day of every month, the total consignment fees due to the Consignee on all accumulated proceeds of sale in relation to the sale of all Merchandise concluded up to the 15<sup>th</sup> day of that month, and the reimbursement of all other expenses which the Consignor is liable to bear pursuant to the terms hereunder.

## 7. **INTELLECTUAL PROPERTY**

- 7.1 The Consignor hereby authorises and licenses the Consignee to use the IP Rights in the Platforms in relation to the Merchandise for the purposes of performing its obligations under this Agreement including to promote, advertise and sell the Merchandise
- 7.2 Except as provided in clause 7.1, the Consignee shall have no rights in respect of any IP Rights used by the Consignor in relation to the Merchandise and the Consignee hereby acknowledges that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights are, and shall remain, vested in the Consignor or the person through which the Consignor derive the right to use the IP Rights from.
- 7.3 Where the Consignor owns the IP Rights particularly trade marks, registered designs or copyrights which are used upon or in relation to the Merchandise, the Consignor shall, at its own expense, take all such steps as reasonably required to maintain the validity and enforceability of the IP Rights during the Term of this Agreement.
- 7.4 The Consignor shall indemnify the Consignee in full against any claims, losses or damages whatsoever which the Consignee may suffer or incur in connection with the use of the IP Rights by the Consignee in accordance with the terms of this Agreement.

## 8. **CONFIDENTIALITY**

- 8.1 Except as provided by clauses 8.2 and 8.3, each of the parties hereto shall at all times during the continuance of this Agreement and after its termination:
- (i) use its best endeavours to keep all Restricted Information confidential and accordingly not to disclose any Restricted Information to any other person; and
  - (ii) not use any Restricted Information for any purpose other than the performance of the obligations under this Agreement.
- 8.2 Any Restricted Information may be disclosed by the receiving party to any:
- (i) governmental or other authority or regulatory body; or
  - (ii) advisers or employees of the receiving party or of any of the aforementioned person,
- to such extent only as is necessary for the purposes contemplated by this Agreement, or as is required by law or other regulations which the receiving party may be subject to and subject in each case, where appropriate, to the receiving party using its best endeavours to ensure that the person in question keeps the same confidential and does not use the same except for the purposes for which the disclosure is made.
- 8.3 Any Restricted Information may be used by a receiving party for any purpose, or disclosed by the receiving party to any other person, to the extent only that:
- (i) it is at the date hereof, or hereafter becomes, public knowledge through no fault of the receiving party (provided that in doing so the receiving party shall not disclose any Restricted Information which is not public knowledge); or
  - (ii) it can be shown by the receiving party, that the Restricted Information has been disclosed prior to its being disclosed by the disclosing party to the receiving party

9. **FORCE MAJEURE**

- 9.1 If either party is affected by any Force Majeure event, it shall forthwith notify the other party of the nature and extent thereof.
- 9.2 Neither party shall be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or non-performance, of any of its obligations hereunder to the extent that such delay or non-performance is due to any Force Majeure of which it has notified the other party; and the time for performance of that obligation shall be extended accordingly.
- 9.3 If the Force Majeure in question prevails for a continuous period in excess of two (2) months, the parties shall enter into *bona fide* discussions with a view to alleviating its effects, or to agreeing upon such alternative arrangements as may be fair and reasonable.

10. **DURATION AND TERMINATION**

- 10.1 This Agreement shall come into force at the date of this Agreement and shall continue in force throughout the Term and shall automatically be renewed for each successive periods of three (3) months unless and until terminated by one party by giving the other written notice of not less than two (2) weeks .
- 10.2 Either party shall be entitled to terminate this Agreement by giving the other party not less than one month's written notice if:
- (a) that other party commits any breach of any of the provisions of this Agreement and, in the case of a breach of capable of remedy, fails to remedy the same within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - (b) a creditor or encumbrancer attaches or takes possession or a receiver is appointed over any of the property or asset of that other party;
  - (c) that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement); OR [the other party (being an individual) is the subject of a bankruptcy petition or order;]
  - (e) [the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation];
  - (f) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
  - (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.3 For the purposes of clause 10.2(a), a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects.
- 10.4 Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 10.5 The rights to terminate this Agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach, and shall not affect any rights or obligations which have accrued prior to termination.

11. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of Malaysia and the parties hereby submit to the exclusive jurisdiction of the courts of Malaysia.

12. **NOTICES**

12.1 Any notice, request or demand required to be served by any party hereto to the other party hereto under the provisions of this Agreement shall be in writing and shall be deemed to be sufficiently served if:

- (a) delivered by hand;
- (b) sent by prepaid registered post or courier services;
- (c) sent by facsimile ; or
- (d) sent via email message.

to the other party hereto at its address set out herein or such other addresses or facsimile numbers or email addresses as may be notified by any party hereto to the other party hereto for this purpose.

12.2 Any such notice shall be deemed to be served and received:

- (a) if left at any such address, at the time when it is so left;
- (b) if sent by post, on the fifth (5th) day following the day of posting;
- (c) if sent by facsimile transmission, at the time of despatch of the facsimile transmission to the correct facsimile number;
- (d) if sent by courier services, on the third day following the day of placing it with the relevant courier services, as the case may be; and
- (e) if sent by email, on the day and at the time it is received in the relevant email box as specified.

13. **NATURE OF AGREEMENT**

13.1 This Agreement is personal to the parties and may not be assigned without the prior written consent of the other.

12.2 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.

13.2 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties with respect thereto, and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

13.3 Each party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

13.4 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.

[END]