



## RETAILER AGREEMENT

This Agreement is between Vibratex, Inc. (Vibratex, Inc., 38 Executive Court, Napa, California 94558) hereinafter referred to as "Vibratex, Inc." and \_\_\_\_\_, hereinafter referred to as "Retailer".

### **Purpose of Agreement**

Vibratex is the exclusive North American Import Agent for the Maxell Izumi Co., Ltd. massager products: the Magic Wand® Micro (HV-60), the Magic Wand® Mini (HV-135), the Magic Wand® Original (HV-260), the Magic Wand® Plus (HV-265) and the Magic Wand® Rechargeable (HV-270). This Agreement sets forth the terms and conditions by and under which Retailer will be permitted to sell said product line in North America.

### **Term of Agreement**

Unless terminated as hereinafter provided, this Agreement shall remain in force indefinitely and govern all transactions between the parties relating to the above referenced product line.

### **Acceptance of Orders**

Retailer may send purchase orders by mail, email, facsimile, or over the telephone. Purchase orders must include Retailer's name, billing address, the address to which the products are to be shipped, and item number, and the number of units being ordered. For e-commerce sites, a full list of URL's featuring the Magic Wand® Micro, the Magic Wand® Mini, the Magic Wand® Original, the Magic Wand® Plus and the Magic Wand® Rechargeable must be provided.

All purchase orders sent by Retailer are subject to acceptance by Vibratex.

Vibratex will use its best efforts to fill accepted orders within 48 to 72 hours and will use its best efforts to advise Retailer in advance of any inability to make full and timely delivery of any order.

Vibratex is not responsible for any lost sales or revenues resulting from a delay in filling any order.

Vibratex reserves the right to cancel orders that do not meet requirements.

Vibratex reserves the right to refuse or cancel any order deemed questionable or of significant risk to Vibratex regardless of payment method and price confirmation.

### **Shipping**

Unless otherwise specified by Retailer and agreed to by Vibratex, orders will be shipped via the most cost effective shipping option. Damages, shortages or products lost in shipment must be reported to Vibratex within three (3) days of receipt. Vibratex will assist in tracking, tracing and replacing items lost or damaged in shipment and in filing claims with shipping companies when appropriate.

### **Minimum Advertised Price**

In order to protect the integrity of the Magic Wand® product line and its retailer network, the retailer may not advertise the resale price of the product for less than the price set forth below, which excludes shipping and handling charges:

<u>Item #</u>	<u>Description</u>	<u>Minimum Advertised Price</u>
HV-60	Magic Wand® Micro	\$64.95
HV-135	Magic Wand® Mini	\$75.95
HV-260	Magic Wand® Original	\$69.95
HV-265	Magic Wand® Plus	\$79.95
HV-270	Magic Wand® Rechargeable	\$129.95

***Should Retailer grossly fail to comply with this minimum advertised resale price provision, Vibratex shall have the right to immediately terminate Retailer's right to purchase products from Vibratex and Vibratex's distribution channels under this Agreement.*** This applies to designated url web-sites, as well as 'storefronts' under blanket sites (EBay, Amazon, etc.)

For purposes of this section, "advertisements" or "advertising" shall include, but not be limited to, the pages of an e-commerce website (other than an online shopping cart feature), banners or displays placed on any other website other than that of the Retailer, any keyword or other paid-placement advertising, and any non-online form of promotional activity. Advertising shall not be deemed to include display of price in an online shopping cart. An "online shopping cart" is defined as the portion of a website that allows a user to select and purchase an item.

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While Retailer may promote coupons, reduced price or free ancillary products, and other benefits that effectively reduce the total price of the Products (“Ancillary benefits”), Retailer may not display the monetary value of any ancillary benefit in close proximity to the advertised price.

This Agreement shall in no way limit Retailer’s right to set and offer its price.

### **Restricted Sales Outside of North America**

The Magic Wand® Original (HV-260) massager is designed for 110/120V electrical supply in North America, which differs other countries such as Europe and Asia. Given this condition, there may be some risks using converters, which are commonly used to operate the Magic Wand® Original (HV-260) outside of the North American region.

Vibratex will take a zero tolerance position on international sales activities outside of North America. That is, if it is determined that your company, or an agent of your company, is exporting Magic Wand® Original (HV-260) outside of the North American region, you will be restricted from purchasing the unit. In addition, your company may be held solely responsible in the results of any claim associated with the use of the Magic Wand® Original (HV-260) with an electrical converter.

### **Warranty/Return Policy**

The Magic Wand® Micro (HV-60), the Magic Wand® Mini (HV-135), the Magic Wand® Original (HV-260), the Magic Wand® Plus (HV-265) and the Magic Wand® Rechargeable (HV-270) massagers carry a one year warranty which covers defects in workmanship or materials in the mechanical and electrical parts. Detailed warranty information and instructions are provided with each product distributed by Vibratex, Inc. Dismantling or modification of the Wand in any way invalidates this warranty.

### **Termination of Agreement**

Except as otherwise provided herein, either party may terminate this agreement at any time without cause by giving the other party five (5) days written notice of termination.

In the event of termination, this Agreement shall remain applicable to any purchase order made by Retailer and accepted by Vibratex prior to the date of notice of termination was given.

Upon termination of this agreement for any reason, all monies owed by Retailer to Vibratex shall be due and payable immediately.

### **Arbitration of Disputes**

Any claim or controversy arising out of this Agreement and Addendum or a breach thereof shall be settled by binding arbitration which will be conducted by either the American Arbitration Association or “JAMS/Endispute” in accordance with the commercial

arbitration rules of those respective organizations. Judgment upon any award may be entered in any court having jurisdiction. Any such claims shall be arbitrated in California, in either San Francisco, Contra Costa or Napa County

### **Entire Agreement**

This instrument constitutes the entire Agreement between the parties with regard to the sale of the Magic Wand® Micro (HV-60), Magic Wand® Mini (HV-135), the Magic Wand® Original (HV-260), Magic Wand® Plus (HV-265) and Magic Wand® Rechargeable (HV-270) products discussed above. Except as provided herein, this Agreement can only be modified in writing signed by both Vibratex and Retailer.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

### **Sanctions**

Vibratex, Inc. and its agents will monitor and perform routine checks to verify whether resellers are in violation of this MAP Policy.

If an authorized reseller is found to be in violation of this MAP Policy, Vibratex, Inc. directly and through its Distribution channels shall impose the following sanctions:

- First documented violation: Reseller will receive notice that it is in violation of Vibratex's MAP Policy;
- Second documented violation: Reseller will receive notice that it is in violation of Vibratex's MAP Policy;
- Third documented violation: Reseller will receive notice that it is in violation of Vibratex's MAP Policy, and shipments of Magic Wand® Product to Reseller will be suspended for a period of 30 days;
- Fourth documented violation: Reseller will receive notice that it is in violation of Vibratex's MAP Policy, and shipments of Magic Wand® Product to Reseller will be suspended for a period of 60 days;
- Fifth documented violation: Reseller will receive notice that is in violation of Vibratex's MAP Policy, and shipments of Magic Wand Products will be suspended infinitely.

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**Retailer Acknowledgement**

By signing below, I acknowledge and agree to the stipulations indicated in this Retailer Agreement. I further agree that my account will have no recourse, legally or otherwise, against Maxell Izumi Co., Ltd., or Vibratex, Inc.. upon account termination, and all moneys owed and outstanding balances will become due and payable immediately.

I have the authority to sign this document and execute this Retailer Agreement on behalf of my company and related agents of my company. I have read the document and by voluntarily signing below, agree to all terms and conditions herein. I further understand that any false and/ or misleading information could result in the irrevocable termination of my account with Vibratex.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Parent Company: \_\_\_\_\_

dba (if applicable) Company: \_\_\_\_\_

Direct URL Website(s): \_\_\_\_\_

Amazon Storefront(s) Name: \_\_\_\_\_

eBay Storefront(s) Name: \_\_\_\_\_

WalMart Storefront(s) Name: \_\_\_\_\_

Signature of Vibratex Officer: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_