

# ARCHIPELAGO®

## RESELLER TERMS OF SALE AGREEMENT

This Reseller Terms of Sale Agreement (“Agreement”) is entered into on the date indicated above by and between Archipelago, Inc. d/b/a Archipelago, and/or Archipelago Botanicals, (collectively, “Archipelago”), and the Reseller (referred to herein as “Reseller”). Archipelago and Reseller are collectively referred to as “the Parties.”

WHEREAS: Archipelago wishes to sell Archipelago Products to Reseller, and Reseller wishes to purchase Archipelago Products for resale, and as a material incentive for each to engage in the business relationship contemplated herein, each Party agrees:

1. **INTERNET SALES PROHIBITED.** Reseller is prohibited from selling Archipelago products on the Internet unless it applies and is approved by Archipelago in writing for each individual URL. Resale on any Internet marketplaces, including, but not limited to Amazon.com, Walmart.com, or eBay.com, is strictly prohibited.
2. **DIVERSION.** Reseller is prohibited from diverting products. Specifically, Reseller shall not sell or transfer any Archipelago Products to any person or entity for resale. Reseller agrees to restrict, cease, or limit the sale of Archipelago Products to anyone at the request of Archipelago. Reseller agrees not to sell or offer for sale any Archipelago products that Reseller purchased or obtained from a source other than directly from Archipelago.
3. **GEOGRAPHIC SALES BOUNDARY/ LOCATIONS.** Reseller may only sell and advertise for sale Archipelago Products within the United States of America. Archipelago hereby expressly prohibits Reseller from acquiring products or soliciting or consummating sales outside of the United States of America. Reseller shall only be entitled to resell Archipelago Products in person at the store address listed on their Archipelago order(s), or at any other location approved by Archipelago in writing.
4. **NO USE OF UNDISCLOSED “DBA’s.”** In connection with any purchase, sale and/or resale of any Archipelago Product, neither Party shall “do business as” using a name that has not been previously disclosed, in writing and in advance, to the other.
5. **INTELLECTUAL PROPERTY.** The use of the intellectual property of Archipelago, including, but not limited to, trademarks, tradenames, product images, marketing banners, and other digital assets, without written consent from Archipelago is prohibited.
6. **ADVERTISING AND SALES PRACTICES.** Reseller shall conduct business in a reasonable and ethical manner at all times and shall neither engage in any deceptive, misleading, or unethical practices or advertising at any time, nor make any warranties or representations concerning the products except as expressly authorized by Archipelago. Resellers shall comply with any and all applicable laws, rules, regulations, and policies related to the advertising, sale, and marketing of Archipelago products. Unless the Archipelago Product packaging states that the Archipelago Product was made in a country other than the United States, Reseller shall make no claim, regarding country of origin, other than (Archipelago Products are) “Made in the USA using Domestically and Globally Sourced Materials.”
7. **UNILATERAL MINIMUM ADVERTISED PRICE POLICY.** Resellers are informed of Archipelago’s UMAP Policy ([UMAP Policy](#)) as it applies to the advertisement for sale of Archipelago products from resellers to end-users in the United States. There is no agreement, express or implied, between Archipelago and resellers with respect to the advertised or resale pricing of Archipelago products. If any director, officer, employee, representative, or other agent of Archipelago tries to coerce resellers to agree to the price at which resellers advertise or resell Archipelago products, such action shall be considered void, unauthorized, and without effect and resellers shall promptly notify Archipelago’s UMAP Committee via email at [UMAP@Archipelago-USA.com](mailto:UMAP@Archipelago-USA.com).
8. **ADDITIONAL TERMS AND CONDITIONS.**
  - a. **Past Due Payments, Late Fees and Collection Costs.** Reseller agrees to settle all outstanding amounts owed within the established payment terms. Past due amounts are subject to a late fee(s) of 1.5% per month (or the maximum allowed by law). In the event collection efforts are necessary, Reseller agrees to pay all reasonable collection costs including, but not limited to, reasonable attorney and court filing fees. If any single outstanding amount or invoice becomes past due, and collection action is taken, the Parties agree that all amounts due shall immediately become due and payable.
  - b. **FOB Point.** All purchases and sales are made “FOB Archipelago’s shipping warehouse.”
  - c. **Returned Checks.** Any check returned by Reseller’s bank will result in a \$35 returned check fee.

*Effective Date: January 1, 2022*

d. **Refused Shipments and Unsuccessful Deliveries.** Providing Archipelago followed the shipping instructions received, Reseller will accept any shipments made. If shipment is refused or returned by the carrier, Reseller agrees to pay a 20% restocking fee.

e. **Product Returns / Claims for Defect / Damaged or Missing Product / Shipments made by either Party.**

Reseller shall make any claim for damages, missing and/or defective product within SEVEN (7) DAYS of receipt; and

If a product return is required, Reseller shall first obtain and follow instructions received from Archipelago on how to use a Return Material Authorization ("RMA") number; any shipments received by Archipelago that do not bear an Archipelago RMA # will routinely be refused; and

The Parties acknowledge that occasionally, product is damaged through no fault of the other, while it is in transit. In any case where shipping cartons or shipments arrive crushed, saturated, unsealed, incomplete or damaged and, unless the receiving party also arranged the actual shipment, the receiving Party will immediately notify the other Party of the condition or obvious defect or damage of the shipment or partial shipment received, and either hold the shipment received in the exact condition received, or capture and retain photographs, videos or other evidence reasonably needed by anybody to raise a successful financial claim with the carrier. Nothing contained in this paragraph shall change or have the effect of changing or altering the legal effect of the FOB Point on the underlying shipment(s).

f. **Minimum Annual Purchase Expectation.** RESELLER IS NOT OBLIGATED TO PURCHASE ANYTHING AT ALL. However, Archipelago generally believes that an oversaturation or concentration of retailers within any given shopping area can and often does provide a material disincentive for all Resellers to invest financial amounts needed to present and offer a good product assortment to consumers, and to fund the substantial after-sale support costs and service that Archipelago needs and expects. For these reasons, Archipelago follows internal, unilateral policies which are generally designed to prudently manage the placement of Archipelago Products within each respective shopping area. No two shopping areas or retailers are the same, and typically no two product assortments offered by those retailers are the same and, for all those reasons, these decisions are typically based on a myriad of perceived factors and conditions (and are made at the sole discretion of Archipelago). However, Archipelago takes great care and tries to maintain existing reseller relationships, and in making those decisions, Reseller acknowledges and understands that ARCHIPELAGO HAS A GENERAL EXPECTATION THAT IN ALL BUT THE SMALLEST OF MARKETS, RESELLERS ARE EXPECTED TO ACTUALLY PLACE COLLECTIVE ORDERS, DURING ANY TWELVE-MONTH PERIOD, THAT TOTAL \$4,000 OR MORE.

g. **Additional Terms and Conditions.** Resellers agree to comply with the additional terms and conditions set forth by Archipelago from time to time which may be changed by Archipelago in its sole discretion.

9. **NO EFFECT OF ANY CONFLICTING LANGUAGE.** Unless Archipelago updates these Terms & Conditions or the Parties agree to modifications in writing, executed by both parties, these terms of sale will be in effect notwithstanding any conflicting language that may exist in any signed or unsigned Purchase Order, Order Acknowledgement, or Invoice.

10. **GOVERNING LAW.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.

11. **ENTIRE AGREEMENT.** This Agreement replaces any previous Agreement that may have existed, is the entire agreement between the Parties, and can be modified only by written consent of both Parties.

Archipelago reserves the right to update, amend, or modify this Reseller Agreement at any time. Unless otherwise provided, such amendments will take effect immediately, and a reseller's continued use, advertising, offering for sale, or sale of the products will be deemed reseller's acceptance of the amendments.

**If Archipelago determines that a reseller is in violation of this Reseller Agreement, Archipelago may take any and all appropriate legal actions, including, but not limited to, refusing to accept orders from the reseller.**

Any questions regarding this Reseller Agreement must be emailed to: [reseller@archipelago-USA.com](mailto:reseller@archipelago-USA.com).