

# TwinCritters Wholesale Agreement for Retailers

This Wholesale Agreement, which includes Terms and Conditions, Wholesale Application, and Acknowledgment of Agreement (collectively “Agreement”), is made and entered into by and between Amphibitwin, Inc DBA TwinCritters (“Seller”) and the retailer signing the Wholesale Application below (“Retailer”) to be effective on the date of signature by an authorized representative of Retailer (“Effective Date”). The purpose of this Agreement is to provide a means for Retailer to purchase Seller’s pet products (“Products”) at discounted wholesale prices and resell them at Retailer’s business location(s).

## TERMS AND CONDITIONS

These Terms and Conditions will govern this Agreement and apply to this order and every future order between Seller and Retailer for the sale and purchase of Products, unless modified in writing by Seller and signed by Retailer. The following terms and conditions apply to this Wholesale Agreement:

### Qualifications of Retailer.

A Retailer will be eligible to sell Products to consumers from its physical location(s) and on website(s) directly owned and operated by Retailer. Reselling Products to wholesale accounts or engaging in bulk sales transactions is strictly prohibited. Retailer agrees to sell Products only to consumers. On the Wholesale Application, Retailer must list the addresses of business location(s) and directly owned website(s) to be approved by Seller to purchase and resell Products.

### Web Commerce Restrictions.

Retailer is prohibited from selling Products, either directly or indirectly (including through agents), on any third party website or online auction, such as Amazon or Ebay. If Retailer is planning to sell Products in an online marketplace, it must be owned directly by Retailer and listed on the Wholesale Application to be approved by Seller. Retailer agrees not to sell Products on any website that Retailer does not directly own and operate. If Retailer becomes aware that any person to whom Retailer supplies any Products is marketing or selling such Products on any third party website or online auction, Retailer agrees to immediately notify Seller and cease supplying Products to such person.

### Payment Methods.

Payment is required at the time of order. Seller currently accepts all major credit cards through the website ([www.twincritters.com](http://www.twincritters.com)). If Retailer requires Net 30 terms, please contact Seller at [info@twincritters.com](mailto:info@twincritters.com) and if such terms are extended, overdue accounts will be subject to an interest charge of 2% of the amount of the entire invoice

beginning 30 days after the invoice is due and increasing by 2% every 30 days thereafter.

### **Delivery.**

Products ordered by Retailer are shipped by Seller via UPS, DHL, FedEx or USPS. Tracking information is provided to Retailer after the order is paid and shipped. Unless otherwise indicated, ground shipping costs are included in the purchase price. Express shipping is available upon request. All express shipping costs will be pre-paid by Retailer. The risk of loss or damage to Products passes from Seller to Retailer upon delivery. Dates and times of delivery are estimates only and Seller will not be liable for delays of any kind.

### **Shipping Defects, Order Errors.**

Retailer is responsible for inspecting the shipment upon receipt to confirm that Products delivered match the order and are free of damage or any other defect. Seller must return order errors and damaged or defective Products to Seller within 7 days after the date Retailer received the shipment. Retailer's failure to comply with this allocated time period will waive Retailer's claim for incorrect, damaged, or defective Products. Upon receipt of returned order errors, damaged or defective Products, Seller will refund the purchase price of such Products and reimburse Retailer for the return-shipping costs.

### **Returns.**

Retailer may return Products to Seller within 90 days after the date Products are received by Retailer, provided that each Product is returned in the same new/unopened condition as received and the Product is not expired or within 90 days of its expiration date. All return shipping costs are the responsibility of Retailer. When Seller receives returned Products in acceptable condition, Seller will refund the purchase price of such returned Products less the shipping costs included in the original purchase. No returns are permitted after 90 days of purchase without prior written approval from Seller. Products returned after 90 days will be subject to a 20% restocking fee.

### **Seller Marks and Copyright Materials.**

All trade names, logos, graphics, and service marks authorized by Seller, such as such as TwinCritters™ ("Seller Marks") are owned or licensed for use by Seller. All materials published on Seller's website, packaging, Product descriptions, Product specifications, illustrations, images of Products, statements, and other content, ("Copyright Materials") are owned Seller or are under Seller's control. Seller hereby grants to Retailer a revocable, non-exclusive, non-assignable, non-transferrable, and royalty-free limited license to use and publicly display Seller Marks and Copyright Materials in connection with promotional and advertising materials associated with the Products. Retailer will use Seller Marks and Copyright Materials only in strict compliance with Seller's standards, specifications, and instructions. Seller will retain all right, title, and interest in

Seller Marks and Copyright Materials. Retailer understands and agrees that it will not take any action that would impair the value of, or goodwill associated with Seller Marks, Copyright Materials, or Products.

### **Disclaimer of Warranties.**

No warranty, representation, or guarantee is being made regarding Products, the suitability of Products for any particular purpose, or the continued production of any Product. SELLER HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARISING FROM SALE OR USE OF PRODUCTS. LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND IS DISCLAIMED.

### **Limitation of Liability.**

Retailer acknowledges that Seller will not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to damages for loss of profits, goodwill, or other intangible losses (even if Seller has been advised of the possibility of such damages), or personal injuries resulting from use or sale of Products. Retailer further agrees that Seller will not be liable for any improper use or misrepresentations of Products made by Retailer or its customers. Retailer will indemnify Seller for any claim or legal action brought against Seller as a result of such actions.

### **Payment of Taxes.**

Retailer agrees to pay all taxes of every description, federal, state and municipal that arises as a result of the purchase and resale of Products, excluding income taxes. Retailer further agrees that Seller is not obligated to determine whether a sales tax applies and is not responsible to collect, report, or remit any tax information arising from any purchase or sale of Products by the Retailer. Retailer warrants and represents that it is authorized to collect sales tax and Retailer will provide its resale tax number on the Wholesale Application.

### **Independent Parties.**

Seller and Retailer are independent entities, and nothing in this Agreement will be deemed to constitute, create, give effect to, or otherwise recognize a relationship of principal and agent, partnership, or joint venture between the parties. The rights and obligations of Seller and Retailer will be limited to those expressly stated in this Agreement and neither party will have any right, power, or authority to incur any liability or obligation on behalf of or to otherwise bind the other party.

Governing Law. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Pennsylvania without conflict of laws principles.

## Termination.

Seller reserves the right to terminate this Agreement and refuse Retailer the right to purchase and/or resell Products at any time and for any reason. Under no circumstances is Retailer permitted to tamper with the Products. If Retailer is found altering the Products in any way or relabeling the Products, Seller will terminate this Agreement immediately and require Retailer to destroy all Products on hand. In the event of termination of this Agreement for any reason other than tampering, Seller will, at its sole option, either allow Retailer to retain and resell the Products on hand; or Seller will repurchase the remaining Products at the purchase price less the shipping costs included in the original purchase and Seller will pay all such reasonable ground transportation costs to return the Products to Seller.

## Electronic Signatures.

Retailer may affix the signature of its authorized representative electronically to this Agreement by performing the electronic signature method provided in connection with this Agreement ("E-Signature"). Retailer agrees such E-Signature is the legal equivalent to a hand-written signature on this Agreement, which will have the same binding legal effect as if Retailer had personally signed by putting pen to paper. Retailer understands and agrees that Seller will rely on Retailer's E-Signature to effect this Agreement.

## **ACKNOWLEDGMENT OF AGREEMENT**

Submission of the Wholesale Application indicates agreement to be bound by the terms of the Wholesale Agreement. Retailer has caused this Agreement to be executed by its duly authorized representative beginning on the Effective Date of E-signature.