



E I C H H O L T Z

**EICHHOLTZ CORPORATION USA  
GENERAL TERMS AND CONDITIONS OF SALE**

These General Terms and Conditions of Sale ("GTCS") shall govern all quotations, offers, confirmations, and sales of Eichholtz products ("Products") by Eichholtz Corporation USA ("Eichholtz") to a buyer ("Buyer"). Buyer will also mean customer, client, reseller or distributor as and when appropriate.

Any additional or different terms or conditions in any purchase order or other instrument or submission from Buyer shall be deemed objected to by Eichholtz without the need of any further or additional notice of objection, and such additional or different term shall be of no effect or in any way binding upon Eichholtz. The fulfillment of a purchase order by Eichholtz does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these GTCS.

If Buyer and Eichholtz have entered into a separate agreement for the sale of Products, that agreement shall have priority in the event of any inconsistencies between these GTCS and such agreement.

**1 PURCHASE ORDERS, ACCEPTANCE, PAYMENT TERMS**

1.1 Sales of Products will be made by means of purchase orders submitted by Buyer to Eichholtz. Each purchase order will (i) include without limitation the number of units of each Product ordered under each purchase order, (ii) be governed by these GTCS (any reference thereon to other terms and conditions will have no force or effect), and (iii) be subject to the acceptance thereof by Eichholtz. Eichholtz is in no event obligated to accept any particular purchase order, and no purchase order will be deemed accepted by Eichholtz until it is confirmed in writing by Eichholtz. The acceptance or rejection of a buyer by Eichholtz shall be made at Eichholtz's sole discretion.

1.2 Eichholtz will only consider accepting a purchase order after having received full business details of Buyer, including (i) Buyer name and trade name, (ii) contact name and telephone number, (iii) invoice address, (iv) e-mail address, and (v) delivery address and opening hours for delivery to be made. Buyer asserts that payments will not be made by a third party on Buyer's behalf, unless Eichholtz agrees in writing prior to such payment.

1.3 All prices are exclusive of transportation costs, freight, insurance, and all state, federal, and local sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Eichholtz's income, revenues, gross receipts, personnel, real or personal property or other assets.

1.4 All discounts, if any, shall be determined by Eichholtz, in its sole discretion. If a discount is offered for the purchase of a certain quantity or a certain range of Products, Eichholtz is not obliged to apply the discount if fewer or different goods than those offered are ordered.

1.5 Purchase orders may not be cancelled or changed without Eichholtz's written approval. If the price, discounts or dates are based on an apparent error, Eichholtz may correct the mistake or cancel the order in its sole discretion.

1.6 Eichholtz applies minimum order amounts for new accounts and minimum reorder amounts for existing accounts, as described in Eichholtz's Delivery Charges and Order Acceptance Policy, which policy forms an integral part of these GTCS.

1.7 All Products will be suitably packaged for shipment in standard containers, marked for shipment at the address specified in the purchase order, and delivered to Buyer or the forwarding agent selected by Buyer. If Buyer fails to designate a forwarding agent, Eichholtz will make such designation in accordance with its standard shipping practices. Unless otherwise agreed in writing, the Products will be shipped FOB to a location designated by Buyer. All transportation costs, including freight, shipment and insurance, will be paid by Buyer. In the event Buyer has engaged a third-party carrier, Buyer will have

the sole responsibility, at its own risk and expense, for filing any claims with any carrier for any delays or loss of or damage to the Products.

1.8 Upon request, Buyer may ship Products outside the United States but only to approved countries and Buyer must get advance written permission from Eichholtz for any such shipment. Eichholtz may accept or reject any such requests in its sole discretion. These GTCS shall continue to apply to any such transaction(s) and Buyer shall be responsible for all compliance with all laws and regulations, including import and export documentation, fees, duties, and other charges relating to the purchase of the Products. In such instance, the currency used for pricing and other matters referred to herein (including Section 1.5, 1.8, and 5.7) shall be stated in the order confirmation.

1.9 Payment can be made through a bank transfer, check, or by credit card via the website. Buyers placing an order with a value of \$5,000 or more are eligible for a credit rating. Eichholtz reserves the right to require advance payment or require security for any Products ordered. Payments must include the client number and the number of the order confirmation by Eichholtz or invoice number.

1.10 By delivering the Products, Eichholtz will have fulfilled its obligations under the purchase order. If either of the following conditions exist, Buyer must notify Eichholtz as set forth in Section 2 below: (a) the wrong Products are delivered through no fault of Buyer; (b) the Products are defective through no fault of Buyer. If the wrong or fewer Products are delivered, or if the Products are delivered in poor condition and Buyer objects pursuant to Section 2 below, Buyer remains liable for the amount invoiced in respect of the Products rightfully delivered.

1.11 Eichholtz's standard shipping method is curbside delivery at the address as per the purchase order. The Products will be delivered packed on a pallet. For the standard shipping costs and other shipping options and costs, Buyer is referred to Eichholtz's Delivery Charges and Order Acceptance Policy. Buyer is required to notify Eichholtz if it wishes a shipping method other than curbside delivery when submitting the purchase order. .

1.12 Eichholtz's collection of Products can be found at <https://eichholtz.com/usa>. Some items in the product-range may have been discontinued, taken out of production and/or may be temporarily out of stock. For After-sales service Buyer may contact [service@eichholtzusa.com](mailto:service@eichholtzusa.com).

1.13 In submitting a purchase order, Buyer acknowledges that it has reviewed Eichholtz's MAP Policy located at <https://eichholtz.com/usa/map-policy>.

1.14 Subject to explicit approval from Eichholtz's credit insurer, Buyer may be eligible to pay for Products within thirty (30) days or longer, as applicable, as of Eichholtz's invoice date. If such approval is not obtained, Buyer is required to pay for Products in full in advance, prior to shipment.

1.15 In no event will a discount be applied for early payments, unless Eichholtz expressly agrees otherwise in writing.

1.16 Buyer is not entitled to suspend any payment obligation towards Eichholtz for any reason. Buyer will pay invoices without discount, deduction, offset or counterclaim.

1.17 Complaints concerning an invoice must be made in writing and must be received by Eichholtz within 14 (fourteen) calendar days after the invoice date. A complaint does not suspend Buyer's payment obligation. In the event that the complaint is determined by Eichholtz to be justified, Eichholtz will credit the relevant amount to Buyer.

1.18 If Buyer fails to comply with its payment obligation(s) or fails to do so on time or only partly complies with its payment obligation(s), Buyer will be deemed to be in default and the amount owed by Buyer will be immediately due and payable – without any further demand or notice of default from Eichholtz being required. Interest of one percent (1%) per month will accrue on the amount or remaining amount owed, calculated from the first day after the agreed payment period has expired. All attorney's fees and costs incurred by Eichholtz for collecting

amounts owed to Eichholtz will be payable by Buyer.

1.19 In the event of any default by Buyer in the payment of any amounts or charges due, Eichholtz has the right to postpone and/or suspend any further deliveries of any Products, without being liable for any loss suffered by Buyer. Buyer may offset a claim, or alleged claim, against its debt to Eichholtz subject to Eichholtz's express written consent.

1.20 Eichholtz is entitled to suspend or cancel an order or the shipment of Products at any time, and if terminated, Eichholtz shall credit or refund Buyer for any related Products for which Buyer has paid and not received. Eichholtz will endeavor to give Buyer reasonable notice of any such suspension or termination. Eichholtz is not liable for any damages, including special, consequential or incidental damages (such as lost profits or lost savings), that may result to Buyer from any such suspension or termination, and such suspension or termination shall not be deemed a breach or default by Eichholtz.

## **2 DELIVERY; NON-CONFORMING PRODUCTS**

2.1 Any delivery dates communicated or acknowledged by Eichholtz are approximate dates. Eichholtz shall not be liable for any delays, loss or damage in transit. Eichholtz may postpone any delivery in the case of production problems affecting the quantity of Products or the quality of Products produced. If such a delay lasts longer than three (3) calendar months, either party may cancel the order. If any such orders are cancelled, Eichholtz is not liable for any losses, including special, incidental, or consequential damages (such as lost profits or lost savings) by Buyer.

2.2 If Buyer fails to take delivery of the Products or fails to provide the information or instructions to enable delivery, Buyer shall be fully liable to Eichholtz for all damages and losses suffered by Eichholtz, such as (but not limited to) transportation costs, extra storage, handling and insurance. Regarding (re-) delivery, Eichholtz may demand prior payment of all aforementioned costs.

2.3 Eichholtz may allocate available supply of Products among its existing or prospective buyers in such manner Eichholtz deems proper in Eichholtz's sole discretion, without thereby incurring liability on account of the method of allocation determined or its implementation or for failure to perform. Unless the purchase order indicates "ship complete only," Eichholtz may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the Products shipped whether such shipment is in whole or partial fulfilment of Buyer's order.

2.4 Buyer acknowledges that minor changes can occur in shape, color and/or construction depending on the material the Products are made of, the design of the Products, or other reasons. The models, illustrations, drawings and dimensions shown, added or announced by Eichholtz give a general representation of the Products. Changes that may cause the actual design to deviate to some extent from the models, illustrations, drawings or dimensions but that do not result in any material change to the technical and aesthetic design of the Products do not give Buyer the right to refuse to accept or refuse to pay for the Products delivered and shall not be considered a breach by Eichholtz.

2.5 Eichholtz will endeavor to deliver the Products within the agreed term or on the agreed date. However, dates of delivery or other performance by Eichholtz are estimates only and are never considered final or of the essence. Failure to deliver the Products within the delivery period or on the delivery date specified, irrespective of the reason therefor, does not entitle Buyer to any compensation for damages. Upon delivery, Buyer shall check the condition of the packaging and, if the packaging has any noticeable defects, Buyer shall, in the presence of the carrier, open the packaging and check the Products for damage.

2.6 If the Products delivered are, in the reasonable opinion of Buyer, not in accordance with the Products ordered, fewer than the Products ordered, or defects through no fault of Buyer, Buyer shall immediately notify Eichholtz by email to [service@eichholtzusa.com](mailto:service@eichholtzusa.com) but in any event not later than 14 (fourteen) calendar days following the delivery date. This also applies to defects which Buyer should have discovered not later than 14 (fourteen) calendar days following the delivery date. Eichholtz is not obliged to address complaints that have been received beyond this period. Any complaint filed by Buyer must be specified as detailed as possible with a digital photo attached to the

e-mail. Every delivery should be regarded as a separate transaction, that is to say, complaints that relate to a particular delivery have no effect on previous or subsequent deliveries. If the complaint, according to Eichholtz's reasonable judgement, is justified, then Eichholtz will, at its sole option, either: (i) replace the defect or missing Product, or (ii) credit Buyer the purchase price for said Product.

2.7 Defective or non-conforming Products, as determined by Eichholtz at the sole discretion pursuant to Section 2.6, may only be returned to Eichholtz at Eichholtz's expense after Eichholtz has given its prior written approval or after Eichholtz requested Buyer to return the defective Products. If the Products have not been received within 15 (fifteen) business days after Eichholtz has given consent for Buyer to return such Products, Buyer is deemed to have withdrawn its complaint, and Eichholtz will not be liable to Buyer for any refunds, credits, or replacements. In case of replacement of defective Products or Products taken back, Buyer shall be liable for Buyer's costs for mounting, dismounting or re-installation, change of technical installations and other costs relating to the Products and any replacements.

2.8 Buyer must document all sales deliveries. Buyer will retain its distribution and sales records for at least 10 (ten) years, which records shall be released to Eichholtz upon its request if a recall of (a) Product(s) becomes necessary.

2.9 Eichholtz may oblige Buyer to take Products that are defective, or that are reasonably believed to be defective, off the market within a reasonable period of time, to be determined by Eichholtz. In the event Distributor in the reasonable opinion of Eichholtz does not, not fully or not timely cooperate with such recall, any and all expenses involved and ensuing from such a recall action are for the account of Distributor.

## **3 TRANSFER OF RISK AND RETENTION OF TITLE**

3.1 Eichholtz will retain title to all Products supplied and delivered to Buyer until the purchase price of those Products has been paid in full, including any interest owed and costs. If any invoice remains unpaid, Eichholtz's retention of title shall also cover all Products previously delivered which have been paid for by Buyer. Products that are subject to retention of title may only be sold in the context of normal business practice and may not be pledged or otherwise encumbered.

3.2 Buyer has a duty of care in respect of the Products to which the retention of title applies and must insure such Products and keep them insured against all risks customary in the industry, including but not limited to insurance that covers the risk of fire, theft, explosions and water damage. At the request of Eichholtz, Buyer shall provide a copy of the insurance policy, as well as ensure that the rights under the insurance policy covering the Products subject to the retention of title shall be transferred to Eichholtz or that Eichholtz is subrogated in these rights.

3.3 If Buyer fails to fulfil its payment obligations or if Eichholtz has justifiable reason to believe that Buyer will fail to do so, Eichholtz will have the right to require Buyer to return Products delivered to which the retention of title referred to in this paragraph applies, either from Buyer or from third parties that hold the Products on behalf of Buyer. Eichholtz is entitled to enter the business premises of Buyer and take possession of said stock. Eichholtz will have the right either to retain such Products until the purchase price, including interest, costs and damages, has been paid in full, or to sell the Products to third parties, in which case the net proceeds will be deducted from the total amount payable by Buyer.

3.4 If any attachment is levied by a third party upon the Products subject to retention of title, Buyer shall inform that party of the retention of title and notify Eichholtz of this immediately.

## **4 WARRANTY**

4.1 Eichholtz warrants that it will supply Products that comply in all material respects with the specifications thereof as published on the Eichholtz website, subject to Section 2.4. Eichholtz warrants that under normal use and in accordance with the (installation) instructions provided, and taking into account the product specifications, the Products shall at the time of the delivery to Buyer and for a period of 12 (twelve) months from the date of delivery, be free from defects in material or workmanship and shall be in conformity with the product specifications in all material respects. Small deviations of the Products in measurements, weight, amounts, colors or other small deviations

do not qualify as a defect, in line with generally accepted industry standards. Defects that are the result of inappropriate use, negligence, carelessness, abuse or intentional damage and changes in color as a result of the use of water, perfumes or soap, to be judged reasonably by Eichholtz, are excluded from any warranty. This warranty will be void if the alleged defect is found to have occurred as a result of misuse, neglect, improper installation or cleaning method, accident, improper storage, or repairs or modifications made without the prior written express consent of Eichholtz or use other than normal use in respect to the specific Product. No other express warranty is made with respect to the Products. If any model or sample was shown Buyer, that model or sample was used merely to illustrate the general type and quality of the Products and not to represent that the Products would necessarily conform to the model or sample.

4.2 Without prejudice to Sections 2 and 4.1., in the event of a defect of a Product within the meaning of Section 4.1. and within the warranty period of 12 (twelve) months from the date of delivery that is not the result of misuse, neglect, improper installation or cleaning method, accident, improper storage, or repairs or modifications made without the prior written express consent of Eichholtz or use other than normal use in respect to the specific Product, that was not discovered or could have been discovered by Buyer within 14 (fourteen) calendar days following the delivery date, Buyer shall notify Eichholtz immediately, but in any event no later than within 14 (fourteen) calendar days of the date on which the Buyer becomes aware or should have become aware of such defect by email to [service@eichholtzusa.com](mailto:service@eichholtzusa.com). If the complaint, according to Eichholtz's reasonable judgement, is justified, then Eichholtz will, at its sole option, either: (i) credit Buyer up to 30% of the invoiced price of such Products or (i) replace the defective Product.

4.3 Buyer will pass through to its customers Eichholtz's warranty to Buyer as set out herein. Buyer may not grant its customers any warranty other than the warranty expressly granted by Eichholtz. Buyer will fully indemnify Eichholtz in respect of such warranty to the extent the warranty to customers exceeds Eichholtz's warranty to Buyer. Buyer shall at all times act in compliance with applicable (consumer) laws and regulations.

4.4 In the event the Products need further certification, testing or type approval for Buyer or Buyer's customer's intended use, Buyer must ensure these requirements are fulfilled and Buyer and Buyer's customer will hold Eichholtz harmless from any and all claims and requests with respect to such additional requirement.

4.5 Subject to the exclusions and limitations as set forth in the above sections as well as in Section 8, the foregoing determines the entire liability of Eichholtz in connection with defective or non-conforming Products.

4.6 **THE PRODUCTS SOLD UNDER THE GTCS ARE PURCHASED BY BUYER "AS IS" AND EXCEPT AS PROVIDED IN SECTION 4.1 EICHHOLTZ DOES NOT PROVIDE ANY WARRANTY FOR THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES THAT THE PRODUCTS ARE OF MERCHANTABLE QUALITY, THAT THE PRODUCTS CAN BE USED FOR ANY PARTICULAR PURPOSE OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

4.7 Buyer acknowledges that it has not been induced by any statements or representations of any person with respect to the quality or condition of the Products and that no such statements or representations have been made. Buyer acknowledges that it has relied solely on the investigations, examinations, and inspections as Buyer has chosen to make and that Eichholtz has afforded Buyer the opportunity for full and complete investigations, examinations, and inspections.

## 5 INTELLECTUAL PROPERTY RIGHTS

5.1 All intellectual property rights with respect to the Eichholtz brand, the Products and related documentation, including but not limited to designs, know-how, patents, trade names, trade secrets, domain name rights, trademarks and copyrights ("IP Rights") are vested in and will remain with Eichholtz or – if applicable – its supplier(s)/licensor(s). Buyer acknowledges that it has reviewed and will comply with Eichholtz's digital brand policy located at <https://eichholtzusa.com/digital-policy>.

5.2 Buyer may not have Products supplied by Eichholtz copied elsewhere, or manufacture imitations thereof that differ in only minor details from the Products supplied or become directly or indirectly involved in such actions. IP Rights in relation on sketches, designs, models or prototypes in whatever phase of elaboration have been delivered to or shown to Buyer, remain the full and sole property of Eichholtz and may not be used otherwise than agreed in writing and solely for that specific purpose and must be immediately returned to Eichholtz at Eichholtz's first request. Any permitted use does not mean that any IP Rights have been transferred.

5.3 Without prior written permission by Eichholtz, Buyer is not allowed to copy pictures, designs, brochures, videos and other material or to use the information on Eichholtz's internet site. Permission by Eichholtz does not affect the rights of the author or rightful owner of the information provided.

5.4 Buyer will notify Eichholtz immediately in writing of any legal action threatened or instituted against Buyer relating to IP Rights of Eichholtz or – if applicable – its supplier(s)/licensor(s).

5.5 Buyer will notify Eichholtz immediately in writing of its becoming aware of any possible infringement or illegal use (or potential thereof) of the IP rights of Eichholtz or – if applicable – its supplier(s)/licensor(s), which notice will fully describe the (potentially) infringing action of such third party, including, if available, full details of the respective party.

5.6 Eichholtz shall have the sole right, in its discretion, to institute and prosecute action, including but not limited to lawsuits, against any infringement of IP Rights. Buyer may not institute and prosecute an action in this respect unless authorized in written by Eichholtz. Any action initiated by Eichholtz shall be prosecuted solely at the cost and expense of Eichholtz and all sums recovered, whether by judgment, settlement or otherwise shall belong solely to Eichholtz. Upon request of Eichholtz, Buyer shall execute all papers, testify on all matters and otherwise cooperate in every way necessary and desirable for the prosecution of the action. In that case Eichholtz shall reimburse Buyer for the reasonable expenses incurred as a result of such collaboration.

5.7 In the event that Buyer infringes any IP Right as referred to in this Section 5, Eichholtz is entitled to claim immediately payable liquidated damages from Buyer, which cannot be set-off, of \$100,000 (hundred thousand dollars) for each infringement and \$10,000 (ten thousand dollars) for each day that this infringement continues, without prejudice to Eichholtz's right to claim full compensation for damages.

### 5.8 Trademarks

5.8.1 The brand name EICHHOLTZ and the EICHHOLTZ logo are internationally protected trademarks of Eichholtz (the "**EICHHOLTZ Trademarks**") its subsidiaries, affiliated or sister companies or any other related company.

5.8.2 Buyer will not interfere with the Eichholtz Trademarks, including challenging Eichholtz's use, registration of, or application to register such trademark, alone or in combination with other words or any similar trademark, anywhere in the world. Buyer will not harm, misuse, or bring into disrepute any Eichholtz trademark. The goodwill derived from using any part of an Eichholtz trademark exclusively inures to the benefit of and belongs to Eichholtz.

5.8.3 Buyer may display the EICHHOLTZ Trademarks in sales promotion of EICHHOLTZ Products and in an overview of the brands that are offered for sale by him. In advertisement, EICHHOLTZ Trademarks may only be used in combination with 'dealer' or 'point of sale'. The proportion of display of the EICHHOLTZ Trademarks must be in accordance with good customs in the market. Buyer shall not have any right to form a business entity whose name includes the EICHHOLTZ Trademarks, or any names similar thereto.

5.8.4 Buyer shall not attend any trade shows or conferences in which Buyer brands itself with any of the EICHHOLTZ Trademarks, or any mark similar thereto.

5.8.5 Buyer will cooperate fully and in good faith with Eichholtz for the purpose of securing, preserving, and protecting Eichholtz's rights in and to the EICHHOLTZ Trademarks. At the first request of Eichholtz, Buyer will execute and deliver to Eichholtz any and all documents and do all other acts and things that Eichholtz deems reasonably necessary or appropriate to make fully effective or to implement the provisions of these terms relating to the ownership, use or registration of the EICHHOLTZ Trademarks.

5.8.6 Buyer shall comply with all of Eichholtz's instructions in

regard to this Section 5 and shall remove or modify any usage of the EICHHOLTZ Trademarks that does not comply with the foregoing, as determined by Eichholtz in its sole discretion.

## **6 WEBSITES, MARKETING OF EICHHOLTZ PRODUCTS**

6.1 In order to offer the best possible service to customers, to secure the luxury and high-end quality of the distribution and sale of the Products and to secure the Products' authenticity and unique design, Buyer agrees to the following with regard to the sale of the Products:

6.1.1 Eichholtz must approve any websites where the Products are to be sold, which approval is based on meeting conditions that are based on specified, qualitative and technical criteria. Eichholtz is entitled to unilaterally amend these conditions from time to time but must first provide Buyer with written notice and a reasonable amount of time to implement any additional requirements.

6.1.2 Buyer will not develop, operate or register any websites that use a domain name that includes the name "Eichholtz" – whether or not written with a capital – or a comparable name that is likely to confuse the general public.

6.1.3 Buyer will observe the quality, high-end, luxury nature of Eichholtz brand and Products in its advertising, promoting, marketing and selling activities. Buyer may only use marketing materials that are provided by or approved by Eichholtz. If Buyer uses advertising/promotion/marketing materials that have not been prior approved by Eichholtz, Buyer will immediately be considered to be in breach of these GTCS and Eichholtz will have the right to suspend its obligations, to terminate any order(s) and/or to claim full compensation.

6.1.4 Buyer will inform Eichholtz beforehand on all its commercial and marketing activities that are related to Eichholtz brand and Products (including but not limited to any social media activities).

6.1.5 Buyer will at all times comply with the instructions regarding the content and manner of marketing of the Products that may be issued by Eichholtz from time to time and will observe all applicable mandatory laws and regulations.

6.1.6 Buyer shall remove or modify any advertising or promotion of Products that does not comply with the foregoing, in Eichholtz's sole discretion.

6.2 The extent to which the EICHHOLTZ Trademarks and Products are presented on the website(s) of Buyer (Website) must be proportional to the current business volume of Products. Pictures and other information to be added need to be prior approved by Eichholtz. Buyer may not use the name Eichholtz in a domain name or a specific subpage named 'Eichholtz' without written consent from Eichholtz. Eichholtz owns the copyrights in the product photos (Product Photos) and photos with style impressions (Style Impressions) that are used by Eichholtz in its promotional material and on its website. Eichholtz may, at Buyer's request, make exceptions to the foregoing in its sole discretion, with such exceptions to be effective only if provided in writing to Buyer.

6.3 The identity of Buyer must always be clearly visible on its Websites, in order to avoid any confusion regarding the identity of the owner of the Websites. Under no circumstances may the use of EICHHOLTZ Trademarks, Product Photos, Style Impressions and other expressions referring to Eichholtz create confusion on the part of visitors of the Website regarding the identity of the owner of the Website. Website landing pages must in terms of style be made in accordance with the common layout used by Buyer.

6.4 Unless Eichholtz gives written permission to do so, Buyer will not let an internet user browse to a page on the Website by using the EICHHOLTZ Trademarks, when on this web page the sale of non-Eichholtz products is (also) promoted.

6.5 Deep links to the website of Eichholtz are allowed. Framed links to the website of Eichholtz are allowed, unless Eichholtz explicitly notifies to Buyer that it does not agree to this use. "Home" buttons may only lead to the home page of each Website.

## **7 TERMINATION AND CONSEQUENCES**

7.1 Eichholtz may, without prejudice to its right for damages, terminate any order or agreement with Buyer with immediate effect by giving written notice to Buyer, if Buyer is in default of any obligation towards Eichholtz and has failed to cure such default, if cure is still possible and/or required by applicable law, within 14 (fourteen) days

after having been notified of the default by Eichholtz. A material obligation includes, without limitation, any obligation with respect to timely payment of amounts due, IP Rights and confidentiality.

7.2 Eichholtz may in any event terminate any order or agreement with immediate effect by giving written notice to Buyer upon the occurrence of any of the following events: (i) Buyer applies for an order or an order is made declaring Buyer bankrupt or granting Buyer suspension of payment, or a liquidator is appointed for Buyer, or any similar event occurs with respect to Buyer or any substantial part of its assets; and/or (ii) a creditor of Buyer levies execution against, forecloses on, or takes possession of, all or a substantial part of Buyer's assets; and/or (iii) Buyer is dissolved, liquidated or ceases to carry on all or a substantial part of its business or a decision is taken to that effect.

7.3 If any order or agreement is terminated or ends in any manner whatsoever, including but not limited to rescission, this will have at least the following consequences: (i) all indebtedness of Buyer to Eichholtz shall become immediately due and payable on the day of termination or expiry of the purchase order or agreement; and (ii) Buyer shall at Eichholtz' request procure that any and all confidential information of Eichholtz will be immediately returned to Eichholtz and that all other documents relating to those materials are immediately returned and/or destroyed and that all electronic data containing or reflecting any of said materials are permanently deleted and Buyer shall not retain any copies, extracts, summaries or other reproductions in whole or in part of such materials or data.

7.4 The following Sections shall in any event survive termination or expiry of a purchase order, these GTCS and any agreement: this Section 7 (consequences of termination), 5 (intellectual property rights), 8 (limitation of liability), 9 confidentiality) and 11 (applicable law and dispute resolution).

## **8 LIMITATION OF LIABILITY; ACTIONS**

8.1 **IN NO EVENT SHALL EICHHOLTZ BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, SHUTDOWN OR SLOWDOWN COSTS, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR OTHER ECONOMIC LOSS, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. THE LIABILITY OF EICHHOLTZ, AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM OF ANY KIND WHATSOEVER, REGARDLESS OF LEGAL THEORY, SHALL NOT BE GREATER THAN THE ACTUAL PURCHASE PRICE OF THOSE PRODUCTS WITH RESPECT TO WHICH SUCH CLAIM IS MADE.**

8.2 **NO ACTION SHALL BE BROUGHT FOR ANY CLAIM RELATING TO OR ARISING OUT OF TRANSACTIONS UNDERTAKEN PURSUANT TO THESE GTCS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION, EXCEPT FOR MONEY DUE ON AN OPEN ACCOUNT.**

## **9 CONFIDENTIALITY**

9.1 Buyer shall not disclose any Confidential Information received from Eichholtz or its affiliates to any third party. Confidential Information means all information and data received by Buyer from Eichholtz that is indicated to be confidential or which Buyer in all reasonableness knows or ought to know is of a confidential nature, whether technical, commercial or financial, details in respect of actual or potential customers or partners or intended business transactions, reports, plans, computer programs, computer files, drawings, models, knowhow and other information that must in all reasonableness be deemed to be confidential and all documents and files containing such information. Confidential Information includes in any event any and all information regarding the Products and the IP Rights.

9.2 If Buyer, or one of its directors, affiliates or employees, acts in violation of the provisions of or pursuant to this Section 9, Buyer shall, without any demand or notice of default being required, be liable to forfeit to Eichholtz an immediately due and payable penalty not eligible for setting-off of \$100,000 (hundred thousand dollars) for each violation and \$10,000 (ten thousand dollars) for each day such

violation continues, without prejudice to the right of Eichholtz to – in addition to the penalty and all other rights accrued under these GTCS or any further agreement – claim full damages and profit gained and to demand that Buyer shall comply with its obligations. Furthermore, Eichholtz explicitly reserves the right to request higher damages and/or penalties in legal proceedings.

9.3 Each party shall, at all times, comply with its respective obligations under all applicable data protection laws and legislation in relation to all personal data that is processed by it in the course of performing its obligations under these GTCS or any further agreement, including by maintaining a valid and up to date registration, notification or other filings under applicable data protection laws and legislation.

## 10 FORCE MAJEURE

10.1 In the event of any type of force majeure, Eichholtz will be entitled, without the requirement of any intervention by any court, at its sole discretion to suspend the provision of Products. Such suspension will not oblige Eichholtz to compensate Buyer for any damages or any other compensation. If the force majeure lasts longer than 3 (three) calendar months, then either party is entitled to terminate any outstanding orders without any liability for any compensation towards the other party.

10.2 In these GTCS, “force majeure” means any cause beyond the control of Eichholtz, even if such cause was foreseeable, that permanently or temporarily prevents delays or hinders in whole or in part compliance with an order, including but not limited to natural disasters, fire, floods, war, quarantines, epidemics, pandemics, civil war uproar, warlike hostilities, acts of terrorism, mobilization or general military call-up, strikes, labor disputes, lock out of workers, sickness of employees, transport problems, governmental regulations, domestic and/or foreign acts restrictions or omissions to act of any governmental authority, import and export restrictions, breakdowns or accidents with machinery, shortage of materials in the market, any other major disruption in Eichholtz’s business, and the impossibility of performance due to any shortcoming on the part of manufacturers of Products, suppliers of Eichholtz, or persons or property engaged by Eichholtz. In the event of force majeure, Eichholtz will have the right to demand payment for any performance by Eichholtz before the event of force majeure occurred.

## 11 APPLICABLE LAW AND DISPUTE RESOLUTION

11.1 These GTCS, any further agreement and any disputes arising out of or related to these GTCS, or any further agreement shall be governed by, and construed in accordance with, the substantive Laws of the State of New York and applicable United States federal law, including the Federal Arbitration Act as specified herein. Except for those Disputes (as defined below) that shall be resolved in arbitration, each party agrees to submit to the personal and exclusive jurisdiction of the courts located in New York, New York provided that any claims or disputes shall be subject to the arbitration provisions set forth herein.

11.2 The parties shall always use their best efforts to resolve a dispute amicably, before any application is made by either party for arbitration or other form of dispute resolution.

11.3 The UN Convention on Contracts for the International Sale of Goods shall not apply to these GTCS or any further agreement.

11.4 In the event that any dispute or claim should arise with respect to any matter covered by these GTCS or the existence, validity, interpretation, performance, breach or termination of these GTCS, and such dispute or claim cannot be amicably resolved pursuant to Section 11.2, then all legal proceeding of any nature brought by either party hereto against the other party to enforce any right or obligation under these GTCS, or arising out of any matter pertaining to these GTCS, or the Products or services to be rendered hereunder (the “Dispute”), shall be finally resolved on an individual, non-representative basis in binding arbitration in accordance with the JAMS Comprehensive Arbitration Rules & Procedures (the “Rules”), as modified by these GTCS, or in accordance with the Rules on which parties may mutually agree in writing; provided, however, that either party may bring any action, in a court of competent jurisdiction, with respect to a Dispute relating to scope, infringement, validity and/or enforceability of any party’s intellectual property rights.

11.5 Any arbitration will be conducted by a single, neutral arbitrator and shall take place in New York, New York. All hearings,

proceedings, and written and oral submissions made with respect to any legal proceedings between the parties arising out of these GTCS, any further agreement and/or transactions arising out of or related to it shall be in English. The arbitrator may award any relief that a court of competent jurisdiction could award, including attorneys’ fees, fees of the arbitrator, and costs and expenses of the arbitration when authorized by law or these GTCS. The arbitration shall be governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1 et seq., and any arbitration award may be entered in and enforced by any court of competent jurisdiction and shall be final and binding upon the parties. Parties agree that the FAA, and not state law, shall govern whether a Dispute is subject to arbitration.

**11.6 THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND TO THE EXTENT NOT SUBJECT TO THE ARBITRATION PROVISIONS SET FORTH HEREIN, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TRANSACTIONS BETWEEN THE PARTIES.**

## 12 MISCELLANEOUS PROVISIONS

12.1 The version of these GTCS that is binding on the purchase of Products by Buyer is the latest version published on <https://eichholtz.com/usa> at the time Buyer’s purchase order is accepted by Eichholtz. In selling and promoting Eichholtz Products, Buyer is bound to the most recent version of these GTCS.

12.2 If any provisions in these GTCS are void or revoked by the courts, the remaining provisions remain in force. Eichholtz and Buyer shall negotiate substitute provisions that are in line with the original provisions in terms of purpose and scope.

12.3 Buyer will promptly notify Eichholtz in writing of (a) any product liability claims or action brought with respect to the Products based on alleged defects in the design or manufacture of the Products or other adverse claim regarding the Products; and (b) any potential or actual litigation or governmental actions relating to the Products or the business operations of Buyer or Eichholtz.

12.4 No agent, employee, or representative of Eichholtz has any authority to bind Eichholtz to any affirmation, representation, or warranty concerning the Products sold to Buyer. Unless an affirmation, representation, or warranty made by an agent, employee, or representative of Eichholtz is specifically and expressly included within these GTCS, it does not constitute a part of the basis of the bargain between the Parties and shall not in any manner be enforceable.

12.5 The relationship of the parties is that of vendor and purchaser. Nothing in these GTCS, and no course of dealing between the parties, shall be construed to create or imply an employment or agency relationship or a partnership, franchise or joint venture relationship between the parties or between one party and the other party’s employees or agents. Accordingly, Buyer shall not be empowered to bind Eichholtz in any way, to incur any liability, make any statements, representations, warranties or commitments, or otherwise act on behalf of the Eichholtz. Each party shall be solely responsible for payment of its employees’ salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefits.

12.6 These GTCS have been prepared in English. While the GTCS may be translated into another language for convenience or other purposes, in the event of any interpretation or construction, whether due to a disagreement between the parties or otherwise, the English version shall be controlling and shall prevail over any translated version.

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