

# ByTheOlive.com Drop Ship Supplier Agreement

This Drop Ship Supplier Agreement (hereinafter, the "Agreement"), effective as of \_\_\_\_\_, is made and entered into by and between \_\_\_\_\_ (hereinafter "Supplier"), and GLOBAL FINDS, LLC, dba ByTheOlive.com (hereinafter, "ByTheOlive").

1. GENERAL. ByTheOlive wishes to sell and promote Supplier's products to ByTheOlive's retail customers on its website(s) located at <http://www.bytheolive.com> and/or <http://www.buytheolive.com> (hereafter the "Site," individually and collectively), and to provide all such sales and/or orders of Supplier's products solely to Supplier. Supplier wishes to make its products available on the Site, and agrees to perform product fulfillment for each such purchased product from Supplier's own inventory directly to the purchasing customer (or his/her designee) in accordance with the terms and conditions of this Agreement.

2. PRODUCT INFORMATION. ByTheOlive will provide Supplier with a product information form (hereafter "Product Information Form") which Supplier shall fill out and return to ByTheOlive. This form will include detailed product information for each product Supplier wishes to sell through the Site, including but not limited to product name, short and long description, wholesale product cost (i.e., ByTheOlive's purchase price), per-item shipping cost, etc. ByTheOlive will import this information for use on the Site. Any losses, charges or costs resulting from errors or incorrect information will be the sole responsibility of Supplier. Supplier may update its Product Information Form from time to time by emailing revisions to ByTheOlive (to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)). ByTheOlive will have 72 hours after receipt of such email to update the information on the Site, and shall be not be bound by Supplier's changes until the expiration of such 72-hour period. Supplier is therefore advised to plan ahead by providing updated information to ByTheOlive at least 72 hours before Supplier wishes any changes to take effect.

3. PRODUCT IMAGES. Supplier shall provide ByTheOlive with one or more digital product images for each product listed on the Product Information Form. All product images supplied to ByTheOlive remain the exclusive property of Supplier or their respective owners. ByTheOlive may post the images on the Site, but may not use them for any purpose other than to gain sales which will be given to Supplier. Supplier represents and warrants: (1) that Supplier is the owner of, and/or is authorized to permit ByTheOlive's use of, each product image Supplier delivers to ByTheOlive; and (2) that the product images provided by Supplier will not infringe the intellectual property rights of any third party. Supplier agrees to indemnify, defend, and hold ByTheOlive harmless against any claimed or actual infringement or other unauthorized use of third-party intellectual property rights, including but not limited to copyrights, stemming from ByTheOlive's use of product images provided by Supplier. Supplier's indemnity herein shall survive termination of this Agreement.

4. PRODUCT COST; MOST-FAVORED STATUS. Supplier expressly warrants that prices charged to ByTheOlive hereunder, as set forth in any Product Information Form provided to ByTheOlive, are and will remain equal to or less than those extended to any other wholesale customer of Supplier for the same or similar goods in similar quantities. In the event that Supplier reduces its wholesale price for such goods for any other wholesale customer during the term of this Agreement, Supplier agrees to immediately reduce its wholesale prices of the goods offered hereunder correspondingly. Supplier warrants that the prices it provides to ByTheOlive are complete and no additional charges of any type shall be added without ByTheOlive's express written consent. Such additional charges may include, but are not limited to, shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, crating, and any additional handling fees. ByTheOlive may raise or lower the advertised price of any item on the Site at any time to compete with competitors' advertised pricing. ByTheOlive may contact Supplier to discuss a strategy for lowering prices in order to remain competitive.

5. **SUPPLIER BUSINESS PROCESS STANDARD.** At all times during the term of this Agreement, Supplier shall have and maintain reliable and efficient business processes for drop shipping, including but not limited to:

- (a) Accurate inventory reporting to avoid cancellations and adverse customer experiences;
- (b) An accurate order fulfillment process that ensures the correct items are picked, packed, shipped, and tracked to the correct location;
- (c) An order-packing process that ensures all ByTheOlive packing standards set forth in this Agreement are met; and
- (d) Ability to meet the required shipping requirements and timeframes set forth in this Agreement.

6. **PACKING SLIPS, INSERTS, PACKAGING, AND LABELING STANDARDS.**

(a) Each package sent to a customer will appear to have come from ByTheOlive directly. Supplier's packing slips must include at least the following:

- i. The name "ByTheOlive.com"
- ii. ByTheOlive.com email address, namely "orders@ByTheOlive.com"
- iii. Customer name
- iv. ByTheOlive's Customer Order Number
- v. Product Description Information (item name, size, quantity, etc.)
- vi. UPC information

(b) Supplier's packing slips shall NOT contain:

- i. Any product pricing information
- ii. Any company name other than ByTheOlive or ByTheOlive.com
- iii. Any address other than the recipient's address and the return address

(c) Supplier shall be responsible for its own costs related to packing slip design.

(d) Package inserts (including but not limited to ByTheOlive promotional and marketing materials) provided to Supplier by ByTheOlive shall be enclosed in each shipped package according to ByTheOlive's instructions as they may be provided to Supplier from time to time. All other inserts must be pre-approved in writing by ByTheOlive before they may be included in any shipped package. (Please email suppliers@bytheolive.com to request pre-approval.) Supplier shall maintain a sufficient supply of inserts so as not to disrupt or delay shipping. Inserts, including instructions to the recipient, shall not contain material that refers or relates to any party other than ByTheOlive.

(e) Products must be shipped in corrugated boxes (e.g., no bags), packed and sealed to ensure safe delivery. Supplier shall use appropriately-sized boxes and packing materials for each product. Sufficient packing material(s) shall be placed underneath, on top of, and around shipped items ensure that products do not shift significantly during transit. Supplier is responsible for all costs related to packaging and labeling.

(f) Supplier shall combine orders with multiple items into one shipment to the customer whenever reasonably possible, and shall inform ByTheOlive whenever multiple shipments are made so that ByTheOlive may in turn notify the customer.

7. **ORDER STATUS, SHIPMENT AND DELIVERY.**

(a) *Tracking.* Supplier shall have and maintain the ability to track shipments.

(b) *Shipping Timeframe and Method.* Supplier shall process and ship each order according to the shipping timeframe and shipping method designated by the customer or as otherwise instructed in ByTheOlive's order email to Supplier.

(c) *Standard Shipping.* Standard shipping is via ordinary ground service.

(d) *Ground Shipments.* For ground shipments, Supplier shall have all in-stock drop ship orders out of its warehouse within forty-eight (48) hours of Supplier's receipt of order email, and shall make every reasonable effort to ensure that all merchandise is received by the customer within three to six (3 to 6) business days from the date of the order transaction.

(e) *Expedited Shipments.* Supplier shall have the capability to make expedited shipments (e.g., Next Day Air Saver and Second Day Air shipments; 1-day, 2-day or 3-day shipping). Expedited shipments must be prioritized and shipped ahead of ground orders on the first possible day on which shipment may be made.

(f) *Ship Notification.* Within one (1) business day of shipment, Supplier shall email a ship notification, including the carrier name and applicable tracking number(s), to ByTheOlive (at [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)).

(g) *Cancellations.* Orders for any item that is unavailable for timely shipping (e.g., due to lack of inventory or any other reason) must be cancelled within one (1) business day from when the purchase order is made available to Supplier. Supplier shall notify ByTheOlive of all such cancellations on a daily basis via email (to [suppliers@ByTheOlive.com](mailto:suppliers@ByTheOlive.com)). From time to time, at customer's request or otherwise, ByTheOlive may cancel an order via a cancellation email to Supplier. ByTheOlive will not pay invoices or shipping costs for merchandise shipped after an order has been cancelled.

#### 8. CARRIER SELECTION; SHIPPING CHARGES.

(a) For all shipments, Supplier shall select and use a reputable carrier with shipment tracking capability. Supplier shall request and store a tracking number for every shipment.

(b) ByTheOlive will charge the customer the shipping cost per item the Supplier has provided to ByTheOlive. If the actual cost of shipping at the time the product is shipped from Supplier is more than what has been provided to ByTheOlive, Supplier will be solely responsible for the difference and Supplier shall not bill ByTheOlive or the Customer for any additional shipping charges.

(c) Supplier shall notify ByTheOlive of any changes in shipping costs by sending an email (to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)) containing an updated list of items and their associated shipping costs. ByTheOlive will have 72 hours after receipt of such email to update the shipping costs on the Site, and shall not be bound by Supplier's changes until the expiration of such 72-hour period. Supplier is therefore advised to plan ahead by providing updated shipping costs to ByTheOlive at least 72 hours before Supplier wishes any changes to take effect.

#### 9. ADDITIONAL SHIPPING DETAILS

(a) All shipments are subject to carrier regulations.

(b) ByTheOlive's policy is that the customer pays all shipping and handling charges on all shipments, including refusals and returns.

(c) Orders shipped to Alaska, Hawaii, Virgin Islands and Puerto Rico must ship via Air due to carrier regulations. Note individual carrier service levels depending on destination.

(d) For international shipments, Supplier will be responsible for all duties and broker fees. These charges may be billed to Supplier after the order has shipped. Contact [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com) with any specific questions.

(e) In some limited cases (such as military APO/FPO addresses), shipping via U.S. Postal Service may be necessary. Shipments made via U.S. mail are shipped Parcel Post or Priority Mail, are not insured, and tracking is not always available.

(f) Under certain circumstances, shipping methods are limited by the weight, size or destination of the order. ByTheOlive will select the most cost effective shipping method whenever this restriction impacts an order. Freight charges are subject to dimension and oversize carrier freight regulations. Shipping fees are non-refundable. Additional carrier surcharges applied after the order has been shipped will be paid solely by Supplier.

(g) All problems and/or issues regarding shipping/delivery must be resolved by the Supplier.

(h) Shipments that are misrouted due to Supplier error must be resolved at Supplier's expense.

(i) ByTheOlive will reimburse Supplier for any additional shipping fees incurred due to a special request from ByTheOlive.

(j) ByTheOlive does not pay handling fees, drop ship fees, or pick-pack fees. Supplier will be responsible for any expenses incurred during the fulfillment process.

(k) Supplier shall comply with all applicable Federal Trade Commission (FTC) mail order rules and any other legal requirements applicable to the fulfillment of orders.

#### 10. RETURNS, EXCHANGES, MIS-SHIPMENTS, MIS-BILLINGS, SHORTAGES, REFUSALS AND UNDELIVERABLE SHIPMENTS

(a) *Returns and Exchanges; Minimum Fourteen (14) Day Return Policy.* All customer returns and exchanges are directed to the Supplier. For a period of at least fourteen (14) days following customer's receipt of a shipment, the customer shall be entitled to return and/or exchange all unwanted

merchandise in new, undamaged and re-sellable condition as well as merchandise containing manufacturing defects. Supplier shall accept all such returns. Supplier must notify ByTheOlive of a return within one (1) business day of receiving the returned item. Reductions will be taken on invoice for returns, and ByTheOlive will issue a refund to the customer. ByTheOlive will not pay any restocking fees to Supplier.

(b) *Customer Refusals; Undeliverable Shipments.* If Supplier learns that carrier deems an order refused or undeliverable, the Supplier must contact ByTheOlive within one (1) business day (via email to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)) for ship-to address verification and to provide Proof of Delivery to ByTheOlive. ByTheOlive will then contact the customer and, upon ByTheOlive's instruction, Supplier shall return the merchandise back into Supplier's inventory and issue a credit invoice to ByTheOlive. If Proof of Delivery is not provided by Supplier, Supplier must replace the merchandise at no cost to ByTheOlive or the customer. If Supplier does not replace the merchandise, ByTheOlive will assess an expense offset to Supplier, which offset Supplier hereby agrees to honor. Provided that Supplier has provided Proof of Delivery, any shipping charges incurred for the return of refused or undeliverable shipments may be charged to ByTheOlive.

(c) *Loss, Damage, Pilferage.* Claims for lost shipments or damage/pilferage must be reported to ByTheOlive within five (5) days of delivery or expected delivery date. ByTheOlive will incur the cost of replacement of lost items only when Supplier can provide Proof of Delivery. Suppliers must cooperate with ByTheOlive by providing tracking information, and by assisting in researching and resolving carrier claims and recouping any claim dollars.

## 11. INVOICING PROCESS AND PAYMENT

(a) *Payment Terms.* Invoices (minus cost of any merchandise returned to Supplier and any other applicable offsets) will be paid weekly, and shall be deemed timely if paid within fourteen (14) days of the latest of (i) Supplier's invoice date; (ii) actual shipment date of the goods; or (iii) shipment date specified in the order; provided, however, that if for any reason the funds transfer cannot be completed on such date due to technical outages or other situations beyond ByTheOlive's control, ByTheOlive's payment is timely if the funds transfer is completed on the next business day on which completion can occur.

(b) *Electronic Funds Transfer.* Supplier authorizes ByTheOlive to satisfy its payment obligations to Supplier for drop ship transactions subject to this Agreement by initiating Electronic Funds Transfer ("EFT") payments that result in credits to Supplier's deposit account at Supplier's bank. ByTheOlive shall notify Supplier in writing from time to time of the funds transfer system and other procedures that ByTheOlive shall use in connection with this Agreement, all of which shall be binding on both ByTheOlive and Supplier. For each funds transfer initiated, ByTheOlive shall communicate the related remittance information to Supplier, and Supplier shall acknowledge receipt of such funds transfer using the approved system and procedures. Each party shall bear its own respective fees and other charges assessed by its designated banks and any third party EFT service provider(s) (each, a "Third Party EFT Service Provider"). Each party may provide or change its designation of an account, bank or Third Party EFT Service Provider by written notice to the other party in accordance with the "Change Protocol and Service Delays" section of this Agreement, below, provided that Supplier's appointment of an initial and any and all successor Third Party EFT Service Provider(s) shall be subject to ByTheOlive's consent, which consent shall not be unreasonably withheld, delayed or conditioned. ByTheOlive and Supplier, respectively, shall each be responsible for any loss to the other, or to any third party, which may arise by reason of such party's own error, mistake, or fraud in any information provided by it in or pursuant to this Agreement. Each party shall take actions which are reasonably sufficient to prevent unauthorized transactions or improper access to or disclosure of information provided or used pursuant to this sub-section of the Agreement.

(c) *Erroneous Payments.* In the event of any duplicate payment, overpayment, or other payment to which Supplier is not entitled, Supplier shall return such payment to ByTheOlive promptly upon becoming aware of same. If Supplier disallows any credit or discount taken by ByTheOlive, Supplier shall promptly notify ByTheOlive of the amount and reason for such disallowance.

(d) *Inquiries.* Accounts payable questions regarding invoice status and claim copies should be directed to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com). There is a two-month time limit on Supplier's initiation of such inquiries.

12. **TAXES.** The price for goods and services under any invoice or purchase order shall include all applicable federal taxes in effect on both the date of such invoice/purchase order and the date of delivery of the goods and/or performance of the services under such invoice/purchase order. Sales, use, gross receipts or similar direct taxes imposed by any tax authority on goods or services purchased by Supplier for its own consumption may be added to the sales price, and shall be shown separately on Supplier's cost information sent to ByTheOlive. Supplier shall duly remit all such taxes which it is required to collect to the proper governmental authorities when due. If Supplier fails to remit such taxes and ByTheOlive is required to do so, Supplier hereby agrees to indemnify, defend, and hold ByTheOlive harmless for the amount remitted, including but not limited to any lawful penalties assessed in connection therewith. Supplier's indemnity herein shall survive termination of this Agreement.

13. **CUSTOMER SERVICE.** Any customer inquiries received by Supplier shall be forwarded immediately to ByTheOlive (at [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)). Supplier shall not contact a customer directly unless expressly asked to do so by ByTheOlive. Supplier shall provide primary and secondary dedicated personnel to assist ByTheOlive with customer service related issues. Such personnel shall meet the following criteria:

- (a) Regularly scheduled hours (8:00AM – 5:00PM, Monday – Friday);
- (b) Access to email;
- (c) Access to inventory availability information;
- (d) Access to shipping and tracking information;
- (e) Shall respond to ByTheOlive's inquiries within one (1) business day;
- (f) Shall have general working knowledge of the ByTheOlive process; and
- (g) Shall have out-of-office procedures such that when primary service personnel are out of the office during business hours, secondary personnel must be available.

14. **CHANGE PROTOCOL AND SERVICE DELAYS.** Supplier shall provide a minimum of fourteen (14) days advance written notification to ByTheOlive (at [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)) for significant operational or technical changes that may affect the direct-to-consumer or drop-ship process. These include but are not limited to warehouse changes/moves, closures, technological changes, bank changes, EFT provider changes, etc. Supplier shall likewise communicate any potential service delays to ByTheOlive a minimum of fourteen (14) days prior to any anticipated or scheduled service delay. A service delay is any situation or event which impacts the ability to ship to customers within the expected timeframe. Unanticipated service delays caused by, e.g., inclement weather, employment disputes, or any other special occurrences must be communicated immediately to ByTheOlive via email (to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)).

15. **CONFIDENTIALITY; USE OF CUSTOMER INFORMATION.** All ByTheOlive customer names, addresses, and other business information are acknowledged to be confidential and the sole property of ByTheOlive. Supplier will make all reasonable efforts to protect and maintain this confidentiality. Supplier will not sell, rent, disclose or otherwise transfer such information or the right to use such information to any third party, and will use such information only for the purpose of performing this Agreement. Supplier shall not communicate with ByTheOlive's customers except upon ByTheOlive's express request. Any breach of this section of the Agreement will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company shall be entitled to injunctive relief with respect thereto in addition to any other remedies. This paragraph shall survive the termination of this Agreement.

16. **SUPPLIER REPRESENTATIONS, WARRANTIES AND COVENANTS.** Supplier represents, warrants and covenants to ByTheOlive and its successors and assigns that:

- (a) Supplier's goods will pass without objection in the trade under the description provided by Supplier in the Product Information Form; will be fit for the ordinary purposes of such goods; and will be free of defects in workmanship and material.
- (b) The prices for goods charged to ByTheOlive hereunder, as set forth in any Product Information Form provided to ByTheOlive, are and will remain equal to or less than those extended to any other wholesale customer of Supplier for the same or similar goods in similar quantities.

(c) The prices shown on any Product Information Form provided by Supplier shall be complete and Supplier shall not add additional charges of any kind except in conformity with the provisions set forth in this Agreement.

(d) The title conveyed to ByTheOlive with respect to the goods shall be good and sellable and their transfer rightful, and the goods will be delivered free of any security interest, lien, encumbrance, or charge.

(e) The goods will be free of any claim by any person for infringement or misappropriation of any patent, copyright, trademark, trade secret, license or other third party rights.

(f) The goods will be furnished in compliance with all federal, state and local laws, rules and regulations applicable to the importation, manufacture, shipment, sale, use, performance, safety, branding, packaging, marking and labeling of the goods.

17. DUTY TO INDEMNIFY. Supplier will indemnify, defend, and hold harmless ByTheOlive from any action against it by a third party that is based on: (a) a product liability claim involving injury or damages caused by any goods of Supplier that were sold to a ByTheOlive customer under this Agreement; or (b) a breach or violation of any of Supplier's representations, warranties or covenants set forth in this Agreement; or (c) any claim type for which Supplier has expressly indemnified ByTheOlive under the terms of this Agreement. Supplier will defend at its own expense any such actions brought against ByTheOlive, and will pay any costs, damages and reasonable attorneys' fees attributable to such actions that are awarded in final judgment against ByTheOlive. Supplier will not settle any such claim without ByTheOlive's prior written consent if the terms of the settlement would impair or limit the scope or exercise of any rights otherwise owned, assigned to, or exercisable by ByTheOlive.

18. TERM; TERMINATION; NOTICE; SURVIVAL

(a) This Agreement shall be in effect as of the Effective Date, and shall remain in effect unless and until terminated pursuant to subsection (b) below.

(b) This Agreement may be terminated by either party, with or without cause, upon thirty (30) days written notice to the other party in accordance with subsection (c) below, such notice to be effective upon receipt of such notice by the receiving party.

(c) A termination notice must be in writing and delivered by email, confirmed facsimile transmission, courier, overnight delivery service, or certified mail, and in each instance will be deemed given upon receipt.

(d) The rights and obligations of the parties under Sections 3, 11(b), 11(c), 12, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of this Agreement will survive any termination or expiration of this Agreement, as will any other provisions of this Agreement that survive termination by their express terms.

19. ASSIGNMENT; CHANGE OF CONTROL. No rights or duties of Supplier arising out of this Agreement shall be assigned or delegated by Supplier without ByTheOlive's prior written consent. Subject to the foregoing, the rights and obligations of the parties will bind and inure to the benefit of the parties' respective successors and assigns. Supplier shall promptly notify ByTheOlive in writing (by email to [suppliers@bytheolive.com](mailto:suppliers@bytheolive.com)) if ownership of Supplier changes, or is expected to change.

20. WEBSITE TERMS OF USE. To the extent they are relevant to any dealings between ByTheOlive and Supplier, the Terms Of Use set forth on the Site are expressly incorporated into this Agreement and are binding on the parties hereto. In the event of a conflict between this Agreement and the Terms of Use, this Agreement shall control.

21. WAIVER; AMENDMENT. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement may not be modified or supplemented by course of dealing or course of performance between the parties or by usage of trade. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by a duly authorized representative of the party or parties to be bound, except that ByTheOlive may from time to time amend this Agreement by posting amended or restated Terms of Use on the Site, in which case such amendment(s) to this Agreement shall be incorporated herein immediately upon posting, and shall apply to all orders accepted by Supplier after ByTheOlive's posting of same.

22. LIMITATION OF LIABILITY. In no event shall ByTheOlive's liability hereunder include any special, indirect, incidental or consequential losses or damages, even if ByTheOlive shall have been advised of the possibility of such potential loss or damage.

23. MISCELLANEOUS. This Agreement shall not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. This Agreement and each order hereunder shall be governed by and construed in accordance with the Uniform Commercial Code and other applicable laws (excluding conflict-of-law provisions) in effect in the State of California. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in or for Placer County, California, and the parties hereby irrevocably consent to personal jurisdiction and venue therein. This Agreement may be executed in any number of counterparts (by email, facsimile, or otherwise), each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. If any provision of this Agreement is determined to be illegal, against public policy or otherwise unenforceable, it will not invalidate or render unenforceable any other provision hereof, and each such provision shall at all times be considered separate and severable in this regard.

24. SUPPLIER'S ACKNOWLEDGEMENT. As a material inducement to cause ByTheOlive to enter into this Agreement, Supplier represents and warrants to ByTheOlive that Supplier has read and understands this Agreement.

IN WITNESS WHEREOF, EACH PARTY THROUGH ITS RESPECTIVE DULY AUTHORIZED REPRESENTATIVE HEREBY EXECUTES THIS AGREEMENT.

SUPPLIER

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

Name:

Title:

Street Address:

State/Province:

Zip/Postal Code:

Country:

Phone Number:

Email Address:

GLOBAL FINDS, LLC, dba ByTheOlive

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

Name:

Title: