

## LYST LTD

### MAGENTO PARTNER TERMS AND CONDITIONS

#### 1 PARTIES AND INTRODUCTION

- 1.1 Lyst owns and operates the Lyst Sites (as defined below), an online fashion platform which enables its Customers (as defined below) to create a customised shopping feed of products and buy fashion products from a wide range of merchants. Lyst promotes, markets, and offers for sale third party merchant products through the Sites.
- 1.2 Merchant, whose details appear in the sign-up form accompanying this Agreement (“**Sign Up Form**”), offers various Products (as defined below) for sale to its customers via the Merchant Sites (as defined below).
- 1.3 These Terms and Conditions, together with the Sign-Up Form (collectively, this “**Agreement**”) form the basis upon which Lyst and Merchant agree to cooperate to provide a Channel (as defined below) to market in order to promote, market and sell certain Products to Customers through the Sites and to share revenues associated with such sales during the Term (as defined below).
- 1.4 Lyst offers its Customers an Integrated Checkout Service (as defined below) via the Sites, an application that allows Customers to purchase Products from multiple retailers directly through the Sites. Merchant and Lyst agree that all payments for Orders (as defined below) will be made using the Integrated Checkout Service.
- 1.5 The Channel (as defined below) is facilitated by Magento (as defined below). Lyst has entered into separate terms with Magento which govern, among other things, the basis on which Lyst will obtain access to Merchant data, products, and inventory via Magento.
- 1.6 This Agreement sets out the parties' respective rights and obligations in respect of providing a Channel to market to promote, market and sell certain Products to Customers through the Sites (as defined below).

- 1.7 Lyst shall receive a commission for all Orders made through the Integrated Checkout Service in accordance with this Agreement.

#### 2 DEFINITIONS AND INTERPRETATION

- 2.1 In this Agreement, unless the context otherwise requires:

“**Agreement**” has the meaning given in clause 1.3.

“**Affiliate**” means, in relation to a body corporate, any subsidiary or holding company of such body corporate, and any subsidiary of any such holding company, in each case from time to time.

“**Alternative Marketing Channel**” means a referral channel operated by an affiliate or publisher for the purpose of referring a Customer to the Merchant Sites, excluding any channels operated by (i) Lyst or (ii) the Merchant.

“**API**” means an application programming interface.

“**Billing Information**” means information concerning a Customer’s credit card or debit card used to process an Order, including, without limitation, account numbers, security codes, and billing addresses.

“**Business Day**” means a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.

“**Business Hours**” means the period from 9.00 am to 5.00 pm on any Business Day.

“**CDPA**” means the Copyright, Designs and Patents Act 1988.

“**Channel**” means the channel created, via Magento, to enable the Products displayed on the Merchant Sites to interoperate with, and be displayed and marketed for sale on, the Lyst Sites.

“**Claim**” has the meaning given in clause 19.1.

“**Commission**” has the meaning given in clause 10.1.

“**Confidential Information**” means all non-public information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) under this Agreement, excluding information that: (i) is known by the Receiving Party prior to disclosure by the Disclosing Party without obligation of confidence; (ii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; (iii) is acquired by the Receiving Party from a third party that is not under an obligation of confidence with respect to such information; or (iv) is or becomes publicly available through no breach of this Agreement.

For the avoidance of doubt and without limiting the foregoing, the following non-exhaustive list shall constitute Lyst’s Confidential Information: the terms of this Agreement, any technical information or code relating to the Lyst Sites, and any financial or business information regarding Lyst’s operations or planned operations.

“**Content Creator**” means any third party selected by Lyst for the purpose of creating User Generated Content, as defined below.

“**Customer(s)**” means any person or entity that makes an Order.

“**Customer Information**” means all information, other than Billing Information, used to process an Order, including, without limitation, a Customer’s name, address, phone number, e-mail, shipping address, and order details.

“**Data Controller**” has the meaning set out in the UK Data Protection Act 2018.

“**Data Protection Legislation**” means all applicable data protection legislation and regulations.

“**Dispute**” has the meaning given in clause 22.3.

“**Dispute Notice**” has the meaning given in clause 22.3.

“**Effective Date**” means the date on which this Agreement is accepted by Merchant by submitting the Sign-Up Form.

“**Force Majeure Event**” has the meaning given in clause 27.1.

“**GTINS**” means the 14-digit unique number used to identify Products.

“**Integrated Checkout Service**” means the application provided by Lyst on the Lyst Sites that enables Customers to purchase Products from merchants directly through the Lyst Sites.

“**Intellectual Property Rights**” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Klarna**” means Klarna AB, a company incorporated in Sweden with offices at Sveavägen 46, 111 41 Stockholm, Sweden, together with any of its respective parents, Affiliates, and subsidiaries, assigns and successors in title.

“**Klarna Services**” means the online payment processing service provided by Klarna and as may be used by the parties to process payments of the Products through the Integrated Checkout Service.

“**Klarna Terms**” means the Klarna checkout user terms and conditions as can be found at

[https://cdn.klarna.com/1.0/shared/content/legal/terms/Klarna/en\\_gb/checkout](https://cdn.klarna.com/1.0/shared/content/legal/terms/Klarna/en_gb/checkout)

(as may be amended or updated from time to time), pursuant to which the Klarna Services are provided.

“**Klarna Virtual Credit Card**” has the meaning given in clause 11.1.

“**Launch Date**” means the first day the Channel will be open so that Customers can purchase Products through the Lyst Sites.

“**Legal Requirement**” means any law, proclamation, decision, rule, regulation, order, resolution, notice, rule of court, bye-law, directive, statute, statutory instrument, standards, codes of conduct or other instrument or requirement having the force of law by whomsoever made, issued, declared, passed or otherwise enacted, created or given effect by, without limitation, HM Parliament, the Council, Commission or Parliament of the European Union, any court or other judicial forum, any coroner or commission of inquiry, any local authority or any statutory undertaker or other competent authority or any other person having such power related to or affecting this Agreement.

“**Lyst**” means Lyst Ltd, a company incorporated in England and Wales, with company number 07132083 and with a registered office at The Minster Building 7th Floor, 21 Mincing Lane, London EC3R 7AG.

“**Lyst Connect App**” means the Magento Extension, which is made available to Merchant by Lyst, via Magento or directly, and which Merchant must install in order to set up the Channel.

“**Lyst Content**” means all content, information, and materials appearing on the Lyst Sites (but excluding the Merchant Content).

“**Lyst Indemnified Party**” has the meaning given in clause 19.1.

“**Lyst Marks**” means the logos, service marks, trade marks, and trade names owned by Lyst and used on the Sites.

“**Lyst Policies**” has the meaning given in clause 14.2.3.

“**Lyst Sites**” means collectively: (i) websites, mobile or tablet applications, and any other platforms owned or controlled by Lyst, including, without limitation, Lyst.com and its related country code

top-level domains; (ii) Lyst-branded social media pages; and (iii) third party product listing advertisements and paid advertising services operated by Lyst.

“**Lyst Stripe Account**” means Lyst’s Stripe account which is linked to Merchant’s Stripe account for the purposes of payment for Orders.

“**Merchant Share**” means Merchant’s share of the Order, being the Order value less the Commission.

“**Magento**” means X.commerce, Inc. d/b/a Magento, Inc.

“**Magento Dashboard**” means the interface operated by Magento which the Merchant will access in order to obtain information relating to Orders.

“**Magento Extension**” means the Lyst Connect App.

“**Merchant Content**” means all content, information, and materials provided by or on behalf of Merchant to Lyst, including, without limitation, all content, information, and materials described in clause 3.1.

“**Merchant Marks**” means the logos, service marks, trade marks, and trade names owned and/or controlled by Merchant relating to Merchant and/or the Products.

“**Merchant Sites**” means the various websites, applications and other platforms owned or controlled by the Merchant or other sites powered by Magento for the Merchant.

“**Merchant Stripe Account**” means the Merchant’s Stripe account which is linked to Lyst’s Stripe account for the purposes of payment for Orders.

“**Non-US Merchant**” means a merchant that is not incorporated in the United States of America.

“**Order**” means any order for Products made by a Customer via the Integrated Checkout Service on the Lyst Sites, excluding any test orders submitted by or on behalf of Lyst.

“**Payment Services Provider**” means a third party provider of services for electronic payments.

“**PCI DSS**” means the Payment Card Industry Data Security Standard, as in force from time to time.

“**Personal Data**” has the meaning set out in the UK Data Protection Act 2018.

“**Platform to Business Regulation**” has the meaning given to it in clause 22.1.

“**Products**” means Merchant’s goods available for purchase on the Merchant Sites.

“**Referred Order**” means any order for Products made on the Merchant Sites via referral of the Customer from the Sites to the Merchant Sites.

“**Reply**” has the meaning given in clause 22.3.

“**Return(s)**” means a return of any Order made by a Customer through the Lyst Sites.

“**Sales After Returns**” means the sum paid by Customer to Merchant in respect of Order(s), minus:

if Merchant is a Non-US Merchant: (i) actual shipping costs for the Order(s) as charged to the Customer; and (ii) any Returns actually processed by Merchant to Customers; or

if Merchant is a US Merchant: (i) actual shipping costs for the Orders as charged to the applicable Customer; (ii) any sales taxes or other local, state, or federal taxes that Merchant is obligated to collect on

the Orders; and (iii) any Return(s) processed by Merchant to Customers.

“**Sales Before Returns**” means the sum paid by Customer to Merchant in respect of Order(s), minus:

if Merchant is a Non-US Merchant: (i) actual shipping costs for the Order(s) as charged to the applicable Customer; or

if Merchant is a US Merchant: (i) actual shipping costs for the Order(s) as charged to the applicable Customer; and (ii) any sales taxes or other local, state, or federal taxes that Merchant is obligated to collect on the Order(s).

“**Service Provider**” has the meaning given in clause 13.3.

“**Sign Up Form**” has the meaning given in clause 1.2.

“**Sites**” means collectively: (i) websites, mobile or tablet applications, and any other platforms owned or controlled by Lyst, including, without limitation, Lyst.com and its related country code top-level domains; (ii) Lyst-branded social media pages; (iii) third party product listing advertisements and paid advertising services operated by Lyst; and (iv) any other third parties or platforms not owned and/or controlled by Lyst that Lyst elects at its sole discretion.

“**Stripe**” means Stripe, Inc., a company incorporated in Delaware with offices at 510 Townsend Street, San Francisco, California 94103, together with any of its respective parents, Affiliates, and subsidiaries, assigns and successors in title.

“**Stripe Terms**” means the Stripe checkout user terms of service as can be found at <https://stripe.com/gb/checkout/legal>, the Stripe Privacy Policy <https://stripe.com/gb/privacy> and the Stripe Connect Account Agreement <https://stripe.com/gb/connect-account/legal>.

“**Stripe Token**” means a token generated by Stripe using payment information provided to it by Lyst, for the purpose of processing payment for an Order and used by Stripe to pay: (i) Commission into

Lyst Stripe Account, and (ii) Merchant Share into Merchant Stripe Account.

“**Term**” has the meaning given in clause 15.

“**US Merchant**” means a merchant that is incorporated in any state of the United States of America.

“**User Generated Content**” means media content, including but not limited to text, posts, images, videos, reviews, created by end-users and published on an online or social network.

2.2 Clause and paragraph headings of this Agreement are to facilitate reference only, do not form a part of this Agreement and shall not, in any way, affect the interpretation hereof.

2.3 A reference to a clause is to a clause of this Agreement.

2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.5 A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established.

2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.8 A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time.

### 3 LICENCES AND INTEGRATION INTO THE LYST SITES

3.1 Merchant hereby grants Lyst, and any Content Creators, during the Term a worldwide, non-exclusive, royalty-free, irrevocable, assignable, fully paid-up licence to:

3.1.1 access the Merchant Content and Merchant Marks via Magento or other third party in order to configure and create a Channel between the Sites and Magento for the purposes of delivering the Merchant Content to the Sites and to facilitate the transfer of Order information and the payment of Products via the Integrated Checkout Service;

3.1.2 use all Merchant Content provided to Lyst by Merchant via Magento or other third party for the purposes described in clause 4.1.3 and in order to facilitate the transfer of Order information and the payment of Products via the Integrated Checkout Service;

3.1.3 repeatedly and frequently scrape, crawl, spider and use automated bots and programs for the purposes of collecting Merchant Content from the Merchant Sites, displaying such Merchant Content on the Sites, transferring Order information, and facilitating the payment of Products via the Integrated Checkout Service;

3.1.4 use and display the Merchant Marks on the Sites;

3.1.5 use, copy, create derivative works of, distribute, display, publish, perform, and modify the Merchant Content collected in accordance with this clause 3.1 and Merchant hereby irrevocably and unconditionally waives the benefit of its moral rights arising under Parts I and II of the CDPA and any similar laws of any jurisdiction;

3.1.6 provide links to the Merchant Sites;

3.1.7 place links on the Lyst Sites to the Merchants Sites’ terms and conditions, privacy policy, cookie policy, shipping policy, delivery policy, return policy or other relevant policies of the Merchant Sites which the Merchant requires Customers to accept as part of the Integrated Checkout Service, as nominated to Lyst in writing by the Merchant;

3.1.8 the names, images, and likenesses of any Product designers;

3.1.9 register, lodge, or supply with or to any internet search engines or similar third parties any terms as Lyst sees fit which, for the

avoidance of doubt, may include Merchant Marks, Merchant Content and any terms or phrases relating to the Merchant or designers listed on the Merchant's designer page; and

- 3.1.10 bid on any keywords or adwords, as Lyst sees fit. For the avoidance of doubt, Lyst is not restricted in relation to the keywords and adwords it may bid on, which may include Merchant Marks, Merchant Content and any terms or phrases relating to the Merchant or designers listed on the Merchant's designer page,

in each case, in order to identify, advertise, market, and promote the Products, the Merchant, the Merchant Content and the Sites;

- 3.2 The Merchant shall provide appropriate support, access, or assistance to enable Lyst to comply with the terms of this Agreement and in particular to interact with Magento and/or Klarna.
- 3.3 All goodwill arising from Lyst's use of the Merchant Marks shall inure solely to the benefit of Merchant. Lyst agrees that nothing in this Agreement shall give Lyst any right, title, or interest in the Merchant Marks other than the right to use the Merchant Marks in accordance with this Agreement.

#### 4 MERCHANT OBLIGATIONS

4.1 Merchant shall:

- 4.1.1 install the Lyst Connect App as a Magento Extension, via Magento or directly;
- 4.1.2 permit Lyst to access, via Magento or otherwise, Product information including but not limited to, GTINs (where available), Product types, Product names, Product images, Product descriptions, sizes, inventory, current retail prices, other Product details, and information regarding delivery/shipping options by country;

4.1.3 permit Lyst to access, via Magento or otherwise, Merchant's Content, Merchant Marks and any other information reasonably required by Lyst to market the Products on the Sites;

4.1.4 provide Lyst with access to, and permit Lyst to display on the Sites, links to the terms and conditions, privacy policy, cookie policy, shipping policy, delivery policy, return policy or other relevant policies of the Merchant Sites relating to the Products and information relating to the Products' taxes, shipping costs, shipping options and Product codes and any other information Lyst reasonably requires in order to market the Products;

4.1.5 notify Lyst at least one (1) week in advance of any changes to the items listed in clause 4.1(iv) and provide any changes or updates to such items as soon as reasonably practicable after such changes are made;

4.1.6 permit Lyst to access, reproduce, and use any content related to the Products contained on the Merchant Sites on a repeated and frequent basis;

4.1.7 provide Lyst with artwork, text, logos, graphics, and other content for use on the Sites for purposes of marketing, promoting, and advertising the Products;

4.1.8 provide Lyst any other material, content, or information that it reasonably requires for Lyst to comply with the terms of this Agreement; and

4.1.9 do everything reasonably required (including completing forms where necessary) to enable Lyst to effectively perform the paid search activity as described in 3.1.9 and 3.1.10.

4.2 All data and information to be provided under this clause 4.2 shall be collected by Lyst (in accordance with clause 3.1 and this clause 4.2) via Magento, or otherwise. Merchant shall provide Lyst with all such information, cooperation, and ongoing technical support as Lyst reasonably requests in connection with Merchant's obligations in this

clause 4.2 and the Merchant consents to Lyst dealing directly with Magento for it to perform the Merchant's obligations.

- 4.3 Merchant shall make available to Lyst a sufficient number of suitably qualified personnel to ensure the proper fulfilment of Merchant's obligations under this Agreement.
- 4.4 Merchant shall access Order information via the Magento Dashboard.
- 4.5 Merchant shall be responsible for fulfilling all Orders using the Order information including, without limitation:
  - 4.5.1 processing Orders and Returns;
  - 4.5.2 shipping the Products;
  - 4.5.3 providing to Lyst and Customers all customer service in connection with the Products and Orders;
  - 4.5.4 provide to Customers a meaningful way to contact Merchant in the event the Product is not as described and provide to Customers a reasonable return, refund, cancellation, and adjustment policy; and
  - 4.5.5 not sell Products in a manner that is unfair or deceptive, exposes Customers to unreasonable risks or does not disclose material terms of a purchase in advance.
- 4.6 In the event that Merchant does not provide Lyst with Merchant's shipping and return policy or updates in accordance with clause 4.1.4 and clause 4.1.5, the Sites shall state that Merchant's shipping and return policy for the Products is the same shipping and return policy as is displayed on the Merchant Sites.
- 4.7 Customers that make Orders shall be charged in accordance with the current pricing information, shipping, handling, taxes, and fees provided by the Merchant.
- 4.8 Merchant shall perform the obligations set out in this clause 4 in a professional, workmanlike, and timely manner.
- 4.9 Without prejudice to Merchant's obligations under this clause 4, Merchant will ship or deliver the Products to the Customer within the time period specified in the applicable Order, or, if no such time is specified, a commercially reasonable amount of time consistent with industry practice, after the Order was placed.
- 4.10 Merchant agrees to comply with all Legal Requirements applicable to the supply of the Products and with the terms of its contracts with Customers for the supply of the Products.
- 4.11 Merchant shall at all times be responsible for the acts and omissions of its subcontractors.
- 4.12 Merchant shall only use the Lyst Connect App for the purposes set out in this Agreement and in accordance with the terms set out herein. Merchant shall not make improper use of or otherwise misuse the Lyst Connect App.
- 4.13 Merchant shall pay Lyst in accordance with clause 10.
- 4.14 Merchant shall ensure that at all times it displays the address of its permanent establishment, its privacy policy, an active customer service e-mail address and a customer service telephone number on the Merchant Sites and otherwise complies with applicable consumer law.
- 4.15 Unless otherwise advised by Lyst, Merchant shall at all times comply with Klarna's applicable ethical instructions, to be found at [https://cdn.klarna.com/1.0/shared/content/policy/ethic/en\\_gb/merchant.pdf](https://cdn.klarna.com/1.0/shared/content/policy/ethic/en_gb/merchant.pdf).
- 4.16 Merchant shall comply with all other reasonable instructions provided to it by Lyst in order to ensure compliance with the requirements of a Payment Services Provider.
- 4.17 To the extent Merchant has access to Billing Information, it shall be compliant with PCI DSS and with all Legal Requirements applicable to the Merchant's possession and use of Billing Information.

## 5 LYST OBLIGATIONS

- 5.1 Lyst shall be responsible for operating, updating, and maintaining the Lyst Sites. For the avoidance of doubt, Lyst shall have absolute and total editorial control over the Lyst Sites, and shall have complete discretion to choose which, if any, of the Products to feature and sell on the Sites and how such Products and Merchant Content are displayed on the Sites.
- 5.2 The Magento Dashboard is distributed by Magento. Lyst shall collect and transmit to Merchant, via the Magento Dashboard, relevant information relating to Orders and Customer Information necessary for Merchant to perform its obligations hereunder, as permitted by Magento. Merchant will be able to see details of and information relating to all Orders on the Magento Dashboard, as permitted by Magento. For the avoidance of doubt, Merchant shall be the merchant of record on all Orders.

## 6 DISCOVERABILITY ON LYST SITES

The main parameters determining product ranking on the Lyst Sites are information about the product (such as designer, category, and price) and also customer behaviour and interaction data (such as how many times Lyst displays the product on the Lyst Sites, at what position, whether users of the Lyst Sites click on the product and whether users go on to order the product). These parameters are combined with other information, including the Commission, to produce a final score which is used to deliver the most relevant results to customer search queries on the Lyst Sites.

## 7 COSTS

Each party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Agreement.

## 8 INTELLECTUAL PROPERTY RIGHTS

8.1 Subject to the licenses expressly granted herein, Lyst and its licensors (as applicable) retain all legal and beneficial rights, title, and interest in and to the Lyst Marks, Lyst Sites and the Lyst Content, including all Intellectual Property Rights and proprietary rights therein, and nothing in this Agreement will operate to transfer such rights to Merchant.

8.2 Subject to the licenses expressly granted herein, Merchant retains all legal and beneficial rights, title, and interest in and to Merchant Sites and Merchant Content, including all Intellectual Property Rights and proprietary rights therein, and nothing in this Agreement will operate to transfer such rights to Lyst.

## 9 PAYMENT FOR ORDERS

9.1 Under this Agreement payment for Orders will be received by Merchant in the form of Merchant Share, paid into Merchant Stripe Account.

9.2 Lyst shall determine in its sole discretion the manner in which payments for Orders will be processed.

9.3 Lyst shall collect, transmit (via Magento or otherwise) and/or make available to Merchant via the Magento Dashboard relevant information, which may include virtual credit card details, and Customer Information necessary for Merchant to perform its obligations under this Agreement as permitted by Magento. Subject to the provisions of this Agreement, Merchant will have all rights in and responsibility for the Billing and/or Customer Information as if that Customer had entered it on Merchant Sites. For the avoidance of doubt, Merchant shall be the merchant of record on all Orders, as set out in clause 5.2.

9.4 Lyst shall enable Customers to place Orders for Products on the Lyst Sites using its Integrated Checkout Service. Merchant agrees to provide Lyst with all such information about the Products and technical assistance as Lyst reasonably requires in order to process Orders via the Integrated Checkout Service and the Merchant



consents to Lyst dealing directly with Magento for it to perform the Merchant's obligations.

## 10 REVENUES; PAYMENT; AUDIT RIGHTS

10.1 Lyst will receive either:

10.1.1 16% of the Sales Before Returns; or

10.1.2 20% of the Sales After Returns,

as indicated by Merchant in the Sign-Up Form (the "**Commission**").

10.2 Merchant agrees and acknowledges it is liable to Lyst for the Commission regardless of whether the Commission is collected by and passed to Lyst by Stripe, or other payment process provider, or by Merchant directly.

10.3 The Commission shall be paid to Lyst at time of Order, via Stripe or other Payment Services Provider. Lyst may invoice Merchant retrospectively for outstanding Commission not received.

10.4 Merchant shall receive the Merchant Share at time of Order, either:

10.4.1 via Stripe by payment into Merchant's Stripe Account; or

10.4.2 from another Payment Services Provider into Merchant's relevant or connected accounts.

10.5 From time to time, Merchant may wish to increase the Commission to benefit from certain promotional activities or services provided by Lyst.

10.6 Lyst reserves the right to alter the promotional activities and services that it provides to the Merchant if the Lyst share decreases. Any amendment to the Commission shall be notified in advance by the Merchant to Lyst in writing.

10.7 Lyst has the right to receive payment in the form of the Commission for every Referred Order, excluding any Referred Order where Merchant can provide sufficient evidence that an Alternative Marketing Channel is the subsequent referral after Lyst of that Customer to the Merchant Site prior to the Customer placing the order for a specific Product.

10.8 Lyst may retrospectively invoice Merchant directly in connection with outstanding Commission which was not paid at time of Order. All invoices shall be paid by Merchant to Lyst as specified in the invoice. Merchant shall pay all taxes and duties assessed by any authority in connection with this Agreement and its performance. In the event that any tax withholding is required by applicable law to be made on payment of such Invoice, Merchant shall gross up the amount paid so that the net payment received by Lyst after withholding equals the amount due under this Agreement.

10.9 Except in respect of deduction or withholding of tax required by law (in respect of which Merchant will comply with the preceding provisions of this clause 10), all amounts payable by the Merchant to Lyst shall be paid in full without deduction, withholding, counterclaim or set off.

10.10 Upon expiration or termination of this Agreement howsoever caused Merchant shall ensure that any unpaid Commission is paid to Lyst, either directly or via the relevant Payment Services Provider, within thirty (30) days.

10.11 Any overdue, undisputed amounts due to Lyst under this Agreement shall bear interest (both before and after judgment) at the rate of 4% above the base rate from time to time of Lyst's main bank in the United Kingdom for the time that the undisputed amount remains unpaid calculated from the date when such amount is due up to the date of payment (both inclusive). In the event of any action by Lyst to collect any overdue, undisputed amounts, Merchant shall be responsible for any reasonable costs of collection (including, without limitation, legal fees and expenses).

- 10.12 All expenses, costs and charges incurred by Merchant in the performance of its obligations under this Agreement shall be paid by Merchant unless Lyst has expressly agreed beforehand in writing to pay such expenses, costs, and charges.
- 10.13 During the Term and for three (3) years thereafter Merchant agrees to maintain full, proper, and accurate books, documents, records, and information systems, which is to include access to Magento records, clearly showing all Orders and the calculation of the payments due to Lyst under this Agreement, which shall be kept separate from any books, documents, records, and information systems not relating solely to Lyst.
- 10.14 Upon not less than 10 days' prior notice by written request and during normal Business Hours, Lyst (and/or its authorised representative) shall, during the Term and for a period of two (2) years after the expiry or termination of this Agreement, be permitted to inspect or audit the books, documents, records and information systems, which is to include access to Magento, showing all Orders, including sufficient evidence to confirm fraudulent Orders, and the calculation of the payments due to Lyst and to take copies of them. Merchant shall on demand provide Lyst (and/or its authorised representative) with all reasonable co-operation and assistance in relation to each audit including without limitation all information requested by Lyst (and/or its representatives) within the scope of the audit and access to the Merchant's personnel and/or Merchant's systems and/or premises. Any inspection or audit shall be conducted at Lyst's expense, except in the event that an inspection or audit discovers a discrepancy in payment owed to Lyst of greater than five percent (5%) of the aggregate sums owed to Lyst in any twelve (12) month period audited, in which case, Merchant shall immediately make up such shortfall by payment to Lyst of the shortfall amount, and in such circumstance shall reimburse Lyst in respect of any reasonable professional charges incurred. If any representative of Lyst is authorised to conduct an inspection or audit on behalf of Lyst, such representative shall undertake in advance to Merchant to keep all information obtained strictly confidential and not to use or disclose any such information except for the purpose of reporting the results of its inspection or audit to Lyst.

## 11 KLARNA CHECKOUT

- 11.1 For Orders made via the Integrated Checkout Services with Klarna as the Payment Services Provider, Klarna checkout on Lyst will operate as follows:
- 11.1.1 when a Customer comes to pay for Products using the Integrated Checkout Service, the Customer will, in fact, be purchasing a token for the contents of their basket from Klarna. To place an Order, a Customer must purchase the Klarna Services at the Klarna checkout, and in doing so accept the Klarna Terms and the Stripe Terms (in so far as applicable to them).
- 11.1.2 Klarna will carry out all the fraud and credit checks on the Customer it thinks fit and will pre-authorise payment from the Customer.
- 11.1.3 once it has pre-authorised payment from the Customer, Klarna will issue to Lyst a pre-paid virtual credit card (a "**Klarna Virtual Credit Card**") for the value of the Order. Lyst will pass the details of the Klarna Virtual Credit Card to Stripe.
- 11.1.4 Stripe will then process the Klarna Virtual Credit Card and issue a Stripe Token for the value of the Order. Stripe shall apportion the value of the Order, paying the Commission into the Lyst Stripe Account and the Merchant Share into the Merchant Stripe Account.
- 11.2 Merchant will be responsible for fulfilling the Order and shipping it to the Customer in accordance with this Agreement.
- 11.3 Klarna shall be the merchant of record for the purposes of the sale of a purchasing service (or token) to the Customer. Merchant shall be the merchant of record in respect of the transaction for the supply of goods under the Order.

## 12 CHARGEBACKS AND REFUNDS

- 12.1 In the event of a chargeback:

- 12.1.1 for Orders processed using Klarna as the Payment Services Provider, the Customer will open a dispute with Klarna. Klarna shall be liable for disputed amounts associated with chargebacks arising from fraudulent use of a Customer's payment card. Merchant shall be liable for all other types of chargeback claims. Klarna shall also be liable for the handling, managing, and administering of chargebacks including, without limitation, liaising with Customers and third-party payment providers in relation to any claims for chargeback claims. For the avoidance of doubt, Lyst shall have no liability for chargebacks howsoever arising; and
- 12.1.2 for Orders processed via another Payment Services Provider or otherwise processed via the Integrated Checkout Services, the Customer will follow the appropriate chargeback procedure as advised to it by Lyst or the Payment Services Provider. Merchant shall be liable for all types of chargeback claims, except for fraud. For the avoidance of doubt, Lyst shall have no liability for chargebacks howsoever arising.
- 12.2 Lyst may require Merchant to cooperate in an investigation of a chargeback, including by requiring Merchant to produce any evidence requested (for example, to show proof of delivery) within 24 hours of any request being made by Lyst.
- 12.3 If Lyst is required to compensate Klarna, or other Payment Services Provider, in relation to a claim brought by a Customer arising other than from fraud, Merchant shall be required to compensate Lyst for such payment in full.
- 12.4 Merchant is responsible for processing any properly requested refunds, whether partial or full. The refund amount will be issued by Merchant on the associated Klarna or other Payment Services Provider card and credited to the Customer. Refund amounts may include the price of the product, relevant taxes and duties, shipping costs and non-refundable commissions paid to Lyst.

### 13 MERCHANT PAYMENT OBLIGATIONS

- 13.1 Merchant shall account to and pay Lyst in accordance with clause 9 to clause 13 (inclusive) of this Agreement.
- 13.2 For all Orders for the Products made in accordance with this Agreement, Merchant shall be responsible for collecting and processing payments using the:
  - 13.2.1 the Stripe Token;
  - 13.2.2 an alternative payment method; or
  - 13.2.3 the Billing Information,  
provided to it by Lyst, via Magento.
- 13.3 To the extent Merchant has access to Billing Information, it shall be compliant with PCI DSS and with all Legal Requirements applicable to the Merchant's possession and use of Billing Information. If Merchant outsources the processing of Billing Information to a third party (a "**Service Provider**"), Merchant shall ensure that such Service Provider is compliant with PCI DSS and that such Service Provider complies with the relevant terms of this clause 13, and clauses 14.3 and 14.4 of this Agreement. Merchant shall be responsible for all acts and omissions of its Service Providers at all times.
- 13.4 Merchant shall, at its sole cost and expense:
  - 13.4.1 conduct or have conducted the audits required for PCI DSS certification;
  - 13.4.2 obtain PCI DSS compliance certification prior to storing, processing, or transmitting Billing Information; and
  - 13.4.3 take all actions required for Merchant to maintain PCI DSS compliance during the Term of this Agreement and for any period of time after the Term of this Agreement that Merchant stores, processes, or transmits the Billing Information. Merchant will remain at all times aware of changes to PCI DSS and implement such changes when required to do so.

## 14 DATA PROTECTION

- 14.1 Each party shall comply with Data Protection Legislation and all applicable laws relating to advertising, the internet, privacy, cookies and tracking technology and unfair business practices.
- 14.2 Lyst shall be entitled to process, use, and disclose:
  - 14.2.1 the Billing Information and Customer Information it collects;
  - 14.2.2 information it collects about the nature, type and quantity of Products marketed and sold via the Sites; and
  - 14.2.3 information it obtains or receives from Magento, for any purpose as it sees fit provided that it is in compliance with Lyst's posted terms of use and privacy policy, as the same may be amended from time to time (collectively, the "**Lyst Policies**") and all Legal Requirements.
- 14.3 Lyst shall transmit to Merchant, via Magento, the Customer Information necessary for Merchant to perform its obligations under this Agreement. Subject to the provisions of this Agreement, Merchant will have all rights in and responsibility for the Customer Information as if that Customer had entered it on Merchant Sites.
- 14.4 Merchant will and will require Magento to, at a minimum, establish and maintain such data security procedures as is necessary to ensure the confidentiality of the Billing Information and the Customer Information and that they are not disclosed contrary to the provisions of this Agreement, the Lyst Policies, or any Legal Requirements including, without limitation, Data Protection Legislation. Without limiting the foregoing, Merchant will, as a minimum (and at its sole cost and expense), establish, implement, and maintain appropriate physical, technical and organisational measures to:
  - 14.4.1 maintain the security and confidentiality of such Billing Information and Customer Information, including without limitation, encrypting such information;
  - 14.4.2 prevent unauthorised or unlawful access to or processing of any Billing Information and Customer Information and accidental loss or destruction of or damage to the Billing Information and Customer Information;
  - 14.4.3 comply with PCI DSS at the appropriate level; and
  - 14.4.4 protect against unauthorised access to or use of such information that could result in harm or inconvenience to the individuals to whom such information pertains.
- 14.5 At least once annually, or more frequently upon Lyst's request if required for compliance, legal, or regulatory reasons, Merchant will provide to Lyst all appropriate reviews and reports to monitor Merchant's compliance with its obligations under this clause 14.
- 14.6 Merchant may use and disclose the Billing Information and Customer Information solely in a manner consistent with all Legal Requirements including, without limitation, by complying in respect of Customers' Personal Data with the obligations imposed on Data Controllers by Data Protection Legislation, including but not limited to:
  - 14.6.1 not disclosing or permitting the disclosure of any such Personal Data to subcontractors or any other third parties unless authorised by this Agreement or specifically authorised in writing by Lyst;
  - 14.6.2 ensuring that any transfer of Personal Data outside the European Economic Area is made in accordance with Data Protection Legislation;
  - 14.6.3 ensuring that it has appropriate operational and technological processes and procedures in place to protect against any unauthorised or unlawful processing, access, loss, destruction, theft, use or disclosure of Personal Data (and to take all reasonable steps to ensure the reliability of any employees of Merchant who have access to Personal Data), and upon reasonable request from Lyst, to submit details of those processes and procedures for scrutiny by Lyst or its auditors;

- 14.6.4 not doing anything, nor permitting anything to be done, which might jeopardise or contravene the terms of any data protection registration of Lyst; and
- 14.6.5 immediately notifying Lyst if it receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data, and providing full cooperation and assistance in relation to any such complaint, notice or communication.
- 14.7 Merchant will promptly in accordance with all Legal Requirements honour any Customer requests to opt-out of receiving non-transactional e-mails (e.g., marketing e-mails) from Merchant.
- 14.8 Lyst may from time to time serve on Merchant an information notice requiring Merchant, within such time and in such form as is specified in the information notice, to furnish to Lyst such information as Lyst may reasonably require relating to:
  - 14.8.1 compliance by Merchant or by its subcontractors with Merchant's obligations under this Agreement in connection with the processing of Personal Data; and/or
  - 14.8.2 the rights of data subjects, including but not limited to subject access rights.
- 14.9 Merchant will promptly notify Lyst of any actual or suspected data breach, but in no event later than within 24 hours after discovering or first suspecting such breach.

## 15 **TERM**

This Agreement shall begin on the Effective Date and continue until terminated in accordance with clause 16.

## 16 **TERMINATION**

16.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Agreement without liability in any circumstances:

16.1.1 on Merchant uninstalling the Lyst Connect App;

16.1.2 on Lyst notifying the Merchant of termination in writing.

16.2 Upon expiration or termination of this Agreement howsoever caused:

16.2.1 each party shall promptly return to the other (or at the other party's option, destroy) all the other party's Confidential Information in its possession or control;

16.2.2 any licenses granted hereunder shall immediately cease;

16.2.3 all sums owing to a party under this Agreement shall become immediately due and payable;

16.2.4 Merchant shall promptly process and fulfil all outstanding Orders that were placed by Customers prior to the effective date of such expiration or termination and promptly complete any pending Returns, exchanges, refunds, or other Customer service matters; and

16.2.5 the accrued rights of the parties as at termination or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination shall not be affected or prejudiced.

16.3 Any provision of this Agreement that contemplates performance, application, or observance subsequent to termination or expiration of this Agreement (including but not limited to clauses 1, 2, 7, 8, 9.4, 10.10, 10.11, 13, 16.2, 16.3, 17, 18, 19, 20, and 21 to 31, will survive any expiration or termination of this Agreement or any part thereof, and continue in full force and effect thereafter.

## 17 **CONFIDENTIAL INFORMATION**

- 17.1 Each party agrees that it shall not use or disclose the Confidential Information of the other except as necessary to perform its obligations hereunder.
- 17.2 Each party agrees not to disclose the other party's Confidential Information to any person other than its employees, agents, or independent contractors who have a need to know the same to perform its obligations hereunder, and who are under obligations of confidentiality substantially similar to this clause.
- 17.3 The Receiving Party shall be responsible for any breaches of this clause by its employees, agents, and independent contractors. Each party agrees it shall protect the confidentiality of the other party's Confidential Information in the same manner that it protects its own Confidential Information, but in any case, with not less than a reasonable degree of care. All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed, at the Disclosing Party's direction, and certified by the Receiving Party as having been so returned or destroyed, upon the expiration or termination of this Agreement.
- 17.4 The parties recognise that the disclosure or use of the Disclosing Party's Confidential Information by the Receiving Party in breach of the provisions of this clause 17 would cause irreparable injury to the Disclosing Party.
- 17.5 In the event either party breaches the provisions of this clause 17, the other party, in addition to any other remedies it may have, shall be entitled to seek interim and final injunctive relief. The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent that the disclosure is required by law, by any governmental or other regulatory authority or by any court or other authority of a competent jurisdiction provided that the Receiving Party shall, to the extent that it is legally permitted to do so, provide to the Disclosing Party prompt prior written notice of such requirement and, where permitted to do so by law, take into account the reasonable requests of the Disclosing Party in relation to the disclosure.

## 18 REPRESENTATIONS AND WARRANTIES

- 18.1 Each party represents and warrants to the other party that: it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder, and to grant the licenses granted hereunder.
- 18.2 Merchant further represents, warrants and undertakes to Lyst that:
- 18.2.1 Merchant is the sole legal and beneficial owner of (or otherwise has sufficient rights to) all Merchant Content and Products and all Merchant Marks;
- 18.2.2 the Merchant Content is accurate and up to date; and
- 18.2.3 no Merchant Content, Merchant Marks, or Products infringe the Intellectual Property Rights of any third party or otherwise violate the rights of any third party.
- 18.3 Except as expressly set forth in this clause 18, the Lyst Sites, their components and any other materials provided by Lyst hereunder are provided "as is" and "as available", and Lyst makes no warranties with respect to the same and hereby disclaims all express, implied, or statutory warranties. To the extent that Lyst may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law. Without limiting the foregoing, Lyst makes no representations or warranties with regard to the potential market for the Products or the amount of Sales Before Returns or Sales After Returns that may be generated pursuant to this Agreement.

## 19 INDEMNIFICATION

- 19.1 Merchant shall indemnify, defend, and hold harmless Lyst and Lyst's officers, directors, employees, agents (collectively, the "**Lyst Indemnified Parties**") and each, a "**Lyst Indemnified Party**") from and against any and all losses, liabilities, damages, fines, and related costs and expenses, including reasonable legal fees, disbursements, and costs of investigation, litigation, settlement, judgment, interest, and penalties ("**Losses**") incurred by the Lyst Indemnified Parties in

connection with any third-party claim, action, or proceeding (“**Claim**”) to the extent arising from or relating to:

- 19.1.1 Merchant’s breach of any of its representations, warranties or undertakings in clause 18;
- 19.1.2 Merchant’s negligence or wilful misconduct;
- 19.1.3 Breach of the Merchant’s obligations under clause 12.3, clause 13 and clause 17; or
- 19.1.4 the Products.
- 19.2 Lyst agrees to notify Merchant promptly in writing of any Claim, to permit Merchant to defend, compromise, or settle the Claim, and to provide reasonably available information and assistance regarding such Claim provided that:
  - 19.2.1 if Merchant fails to promptly retain legal representation for any such Claim, Lyst (and/or the relevant Lyst Indemnified Party) may, at Merchant’s expense, retain its own legal representation and defend against such Claim;
  - 19.2.2 Merchant’s choice of legal representation shall be subject to Lyst’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed;
  - 19.2.3 in connection with the control or conduct of the defence and settlement of the Claim, Merchant will keep Lyst regularly informed of relevant matters;
  - 19.2.4 Merchant shall not enter into a settlement of any such Claim that imposes any liability or material obligation on the Lyst Indemnified Parties or materially prejudices the Lyst Indemnified Parties’ rights without Lyst’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; and Merchant shall not enter into a settlement of any such Claim without Lyst’s prior written consent unless such settlement is solely for monetary payment by Merchant or a third party and contains an explicit and

complete unconditional release of the Lyst Indemnified Parties and an obligation among all parties thereto to be held as confidential.

## 20 **LIMITATION OF LIABILITY**

- 20.1 Subject to clause 20.3, in no event shall either party be liable to the other party for:
  - 20.1.1 loss of profits;
  - 20.1.2 loss of business;
  - 20.1.3 depletion of goodwill or similar losses;
  - 20.1.4 loss of anticipated savings;
  - 20.1.5 loss of goods; or
  - 20.1.6 any special, indirect, consequential, or pure economic loss, costs, damages, charges, or expenses,
    - whether or not reasonably foreseeable and even if the first party had been advised of the possibility of the other party incurring that loss or type of loss.
- 20.2 Subject to clause 20.3.1, Lyst’s entire liability under this Agreement or for any cause of action related to the Lyst Sites, the Sites or Lyst Content, shall be limited to the total Commission received by Lyst from Merchant in the twelve (12) months prior to the date on which the claim was made.
- 20.3 Nothing in this Agreement shall limit or exclude:
  - 20.3.1 the liability of either party for death or personal injury resulting from that party’s negligence, fraud, or fraudulent misrepresentation or any other liability which cannot be limited or excluded by law; or
  - 20.3.2 Merchant’s liability to Lyst under clause 19.1.

## 21 NOTICES

Any notice, request, approval, authorisation, consent, or other communication required or permitted to be given or made pursuant to this Agreement (each, a **“Notice”**) shall be in writing and shall be deemed given and effective:

if personally delivered, upon delivery;

if sent by an overnight service with tracking capabilities, upon receipt;

if sent by recorded delivery, within five days of deposit in the mail; or

if by electronic mail, by 9.00am on the next Business Day following transmission.

To Lyst	To Merchant
Lyst Ltd FAO: The Legal Department The Minster Building 7 Floor, 21 Mincing Lane London EC3R 7AG	Unless Merchant notifies Lyst otherwise in writing, to Merchant’s address as written on the Sign-Up Form which forms part of this Agreement.

## 22 PLATFORM TO BUSINESS REGULATION AND DISPUTE RESOLUTION

22.1 Merchants established in, and which offer Products to Customers located in, the European Union may submit complaints pursuant to the Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services 2019/1150 (**“Platform to Business Regulation”**) in relation to:

22.1.1 Lyst’s alleged non-compliance with any obligations laid down in the Platform to Business Regulation which affect the Merchant in the European Union;

22.1.2 technological issues which relate directly to the provision of services under this Agreement in the European Union that affect the Merchant; and

22.1.3 measures taken by, or behaviour of, Lyst relating to the provision of services under this Agreement in the European Union that affect the Merchant.

22.2 Lyst will consider and process such complaints and communicate the outcome to Merchant.

22.3 In the event of a dispute which arises in whole or in part from this Agreement (including any question as to its existence, validity, or termination) or any transaction conducted as a result of or arising out of this Agreement (the **“Dispute”**), full details of the Dispute (including the remedy sought) must be set out in writing (**“Dispute Notice”**) and served upon the other party with any documents relied upon. Any party receiving a Dispute Notice must within 14 days of service of it, serve a written reply (the **“Reply”**) on the serving party. A senior representative of each of the parties with authority to settle the Dispute must within 14 days of service of the Reply meet in good faith to attempt to resolve the Dispute.

22.4 If the parties are unable to resolve the Dispute in the manner set out in clause 22.3, either party may request by service of a notice in writing that the matter be referred to mediation. The mediator, if not appointed by agreement between the parties within 14 days of the written notice suggesting mediation, shall be nominated by the Centre For Effective Dispute Resolution. All negotiations and/or mediation connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in future legal proceedings. Any settlement reached by the parties shall be put in writing and become binding on the parties once signed by a duly authorised representative of each party.

22.5 No party may commence court proceedings until it has attempted to settle the Dispute by negotiation and then by mediation and either the mediation has terminated, or the other party has refused to mediate,



unless the parties have agreed in writing not to mediate, provided that the right to commence proceedings is not prejudiced by a delay.

## 23 ENTIRE AGREEMENT AND REMEDIES

23.1 This Agreement sets out the entire agreement between the parties relating to the subject matter herein and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties, promises, assurances, and arrangements of any nature whatsoever, whether or not in writing, relating thereto.

23.2 This clause 23 shall not exclude any liability for or remedy in respect of fraudulent misrepresentation.

## 24 WAIVER AND VARIATION

24.1 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law, whether by conduct or otherwise, shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law, whether by conduct or otherwise, shall preclude or restrict the further exercise of that or any other right or remedy.

24.2 Lyst may amend this Agreement from time to time. Lyst will provide notice of any variation(s) to this Agreement to Merchant by email (or other electronic means) along with a copy of the updated Agreement and a summary of the changes. Any variation(s) to this Agreement notified to Merchant shall become binding on Merchant on the date advised by Lyst. Should Merchant continue to use the Lyst Connect App beyond that date Merchant shall be deemed to have accepted the variation(s).

24.3 Unless expressly agreed, no variation or amendment shall constitute a general waiver of any provision of this Agreement, nor shall it affect any rights or obligations under or pursuant to this Agreement which have already accrued up to the date of variation or amendment and the rights and obligations under or pursuant to this Agreement shall

remain in full force and effect except and only to the extent that they are varied or amended.

## 25 INVALIDITY

Where any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction then such provision shall be deemed to be severed from this Agreement and, if possible, replaced with a lawful provision which, as closely as possible, gives effect to the intention of the parties under this Agreement and, where permissible, that shall not affect or impair the legality, validity or enforceability in that, or any other, jurisdiction of any other provision of this Agreement.

## 26 ASSIGNMENT

26.1 Except as provided in this clause 26 or as the parties specifically agree in writing, no person shall assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement nor grant, declare, create, or dispose of any right or interest in it.

26.2 Lyst may assign the benefit of this Agreement to which it is a party (in whole or in part) to, and it may be enforced by, any of its Affiliates.

## 27 FORCE MAJEURE

27.1 A party shall not be in breach of this Agreement, or liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions, or accidents beyond its reasonable control (a "**Force Majeure Event**"), including but not limited to any of the following:

27.1.1 acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

27.1.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

- 27.1.3 terrorist attack, civil war, civil commotion or riots;
  - 27.1.4 fire, explosion or accidental damage;
  - 27.1.5 loss at sea; or
  - 27.1.6 collapse of building structures, failure of plant machinery, machinery, computers, or vehicles.
- 27.2 If the Force Majeure Event prevails for a continuous period of more than six months, any party may terminate this Agreement by giving 14 days' written notice to all the other parties. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

## 28 NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## 29 RIGHTS OF THIRD PARTIES

- 29.1 Except for the Lyst Indemnified Parties as provided in clause 19.1, a person who is not a party to this Agreement shall have no right under the UK Contracts (*Rights of Third Parties*) Act 1999 to enforce any of its terms.
- 29.2 Each party represents to the other that their respective rights to terminate, rescind or agree any amendment, variation, waiver, or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

## 30 COUNTERPARTS

This Agreement may be executed in any number of counterparts. Each counterpart shall constitute an original of this Agreement, but all the counterparts together shall constitute but one and the same instrument.

## 31 GOVERNING LAW AND JURISDICTION

- 31.1 This Agreement and any non-contractual rights or obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.
- 31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute of whatever nature arising out of, relating to, or having any connection with this Agreement (including a dispute regarding the existence, formation, validity, interpretation, performance or termination of this Agreement), and waive any objection to proceedings before such courts on the grounds of venue or on the grounds that such proceedings have been brought in an inappropriate forum.

August 2021