

# COLE HAAN

## Retail Agreement

This Retail Agreement (“Agreement”) is made and entered into as of as of \_\_\_\_\_ (the “Effective Date”) by and between Cole Haan LLC, a private company with limited liability organized under the laws of Delaware having its principal place of business located at 150 Ocean Road, Greenland, NH 03840, the United States of America (“Cole Haan”) and the retailer listed below (“Retailer”). To qualify and remain an authorized Retailer of authentic Cole Haan Products, Retailer must adhere to this Agreement at all times. Failure to comply with this Agreement may result in suspension or termination of Retailer’s account with Cole Haan.

### **I General Requirements and Conditions for retailers**

- A. This Agreement describes the terms pursuant to which Cole Haan is willing to sell Cole Haan Products (“Products”) to Retailer, as well as the terms pursuant to which Retailer is entitled to sell Products to consumers via the Approved Stores as named in Section IV. Coop Marketing is not part of this Agreement.
- B. This Agreement is subject to execution of the New Account Credit Application form and the Uniform Sales and Use Tax Certificate. Retailer must maintain accurate and up-to-date company information and disclose all retail locations that carry Cole Haan Products throughout the term of Retailer’s relationship with Cole Haan.
- C. The term of this Agreement shall commence on the Effective Date and shall end three months after notice of termination. Every Party can terminate this Agreement at any time and without a reason. Upon the termination of this Agreement for any reason, Retailer shall not be entitled to and waives the right to termination compensation, damages on account of any loss of prospective profits on anticipated sales or on account of expenditures, including those for advertising or promotion, investments, leases, or other commitments relating to the business or good will of Retailer, including without limitation, damages claimed by reason of Retailer’s reliance upon further continuance of this Agreement. This Agreement shall supersede any other agreements, written or otherwise between the parties.
- D. Cole Haan hereby appoints Retailer as Cole Haan’s reseller to sell the Products via the Approved Stores. Retailer hereby accepts this appointment and agrees and undertakes to faithfully perform and discharge all of its duties, obligations and responsibilities as set forth in this Agreement.
- E. Retailer shall not sell the Products online, unless it has entered into a separate Online Retail Agreement with Cole Haan.
- F. Retailer must comply with all federal, state and local regulations for their type of business.
- G. Retailers will not directly or indirectly sell product to another retailer, or to an e-tailer, distributor, or broker; or sell product under circumstances where it knows or should know, based on circumstances of the transaction, that the product is intended for resale or will likely be resold, including sale of products in quantities greater than usual for personal use. Products will not be diverted by the Retailer to any unauthorized resale channels, specifically including unauthorized URL addresses, retail stores, auctions, swap meets, flea markets or any individual or entity which has the intention of reselling goods. Sales through unauthorized sales channels are strictly prohibited.

- H. COLE HAAN WILL NOT BE LIABLE TO RETAILER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, LOSS OF PROFIT OR INTERRUPTION OR LOSS OF BUSINESS), HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN AN ACTION BASED ON CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. COLE HAAN'S LIABILITY FOR MONEY DAMAGES, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO TWELVE (12) MULTIPLIED BY RETAILER'S AVERAGE MONTHLY PURCHASE OF PRODUCTS (AS MEASURED BY THE TOTAL PURCHASE PRICE OF SUCH PRODUCTS) OVER THE PRECEDING TWELVE (12) MONTHS (OR, IF LESS THAN TWELVE (12) MONTHS HAS ELAPSED, SINCE EFFECTIVE DATE OF THIS AGREEMENT). THESE LIMITATIONS WILL APPLY REGARDLESS OF THE LEGAL THEORY OF LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY.
- I. All questions concerning this Agreement, the rights and obligations of the parties, enforcement and validity, effect, interpretation and construction shall be determined under the laws of the State of New York. Each of the Parties consents and submits to the exclusive jurisdiction and venue of the courts located in New York City.

## **II Trademark, Intellectual Property Policies**

- A. Retailer acknowledges and agrees that Cole Haan owns all proprietary rights in and to the Cole Haan brand, name, logo, trademark(s), patent(s), copyright(s) and other intellectual property (the "Proprietary Rights"). Use by Retailer of the Proprietary Rights is authorized only for the purposes described in this Agreement and will cease upon termination of the Retailer's relationship with Cole Haan.
- B. Setting up businesses or websites, registering domain names, or creating social media usernames/handles on any social media website or service that contain any Cole Haan trademark, copyright or logo are subject to and conditioned upon Cole Haan' approval and authorization, which Cole Haan may withhold or revoke at any time in its discretion.
- C. Retailer understands that nothing herein shall grant to Retailer any right, title or interest in or to Cole Haan trademarks or any Proprietary Rights.
- D. At no time during or after the term of the retailer relationship will Retailer challenge or assist others to challenge the Cole Haan Trademarks or the registration thereof or attempt to register any trademarks, marks or trade names confusingly similar to those of Cole Haan.

## **III Systems, Policies and Services**

- A. Retailer must have effective systems, policies, and services in place to ensure that the needs of the consumer and of Cole Haan are being met.
- B. Retailer must comply with the applicable Cole Haan Partner Marketing and Quality Control Guidelines. Retailer hereby confirms to have received a copy of aforementioned document.
- C. Retailer shall exercise its commercially reasonable best efforts to safeguard the prestige and goodwill represented by Cole Haan trademarks, the Proprietary Rights and the images associated therewith.

## **IV Orders and Sales**

- A. Retailer shall purchase Products from Cole Haan or its approved licensees only.
- B. Drop shipping by Retailer is explicitly prohibited.
- C. Retailer shall pay for Products to Cole Haan the price as agreed in an order. Payment and delivery as confirmed by Cole Haan in the credit terms notification.

- D. Retailer shall order Products from Cole Haan in accordance with Cole Haan’s sales order procedures in effect at the time and subject to Cole Haan’s Terms and Conditions of Sale in effect at the time, both of which may be periodically amended with notice provided to Retailer via direct communication or other means of notice, including posting on Cole Haan’s web page. No order shall become binding until accepted by Cole Haan. Cole Haan shall have no obligation to accept any order received from Retailer and nothing in this Agreement shall entitle Retailer to any priority of supply in relation to the Products as against Cole Haan’s other retailers or customers.
- E. Each order for Products accepted by Cole Haan shall constitute a separate contract governed by Cole Haan’s Terms and Conditions of Sale in effect at the time. Any default by Cole Haan in relation to any accepted order shall not affect this Agreement in general, or any other orders placed under it. Cole Haan may at any time, including, but not limited to, in case of the expiration or termination of this Agreement for any reason whatsoever, cancel any orders received from Retailer even if accepted by Cole Haan. Cole Haan shall have no liability to Retailer arising from any non-acceptance or cancellation of orders under this Agreement.
- F. Retailer is not entitled to cancel or modify any order received and accepted by Cole Haan, unless otherwise agreed to by Cole Haan in writing on a case-by-case basis. No cancellations or revisions requests will be processed by Cole Haan within 30 days of the scheduled shipping date.
- G. Subject to Cole Haan’s Terms and Conditions of Sale, property rights in the Products shall pass to Retailer upon payment to Cole Haan of the purchase price payable for such Products.

**V Approved Stores**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused their duly-authorized representatives to execute this Agreement as of the date first-above written.

**Cole Haan LLC**

**Retailer** \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_