

## Terms and Conditions

The undersigned certifies that the foregoing is true and correct. The undersigned further authorizes and agrees to release any and all credit information necessary to La Jolla Group, Inc. Overdue balances are grounds for non-shipment, in addition to any other rights or remedies of La Jolla Group, Inc. An annualized rate of 18% may be charged on any late unpaid balances. Any costs and attorney fees incurred in the collection of unpaid accounts will be charged to the undersigned. Signed purchase orders, unless rejected by La Jolla Group, Inc. or its factor, are considered a contractual obligation. Any dispute concerning the relationship between La Jolla Group, Inc. and the undersigned customer of La Jolla Group, Inc. shall be litigated exclusively in the courts located in Orange County, California, and this agreement shall be interpreted under California law, without regard to conflicts of laws principles. I certify that the products purchased from La Jolla Group, Inc. are for resale.

In consideration of the mutual promises and agreements herein contained, it is hereby mutually agreed upon as follows:

The merchandise sold to Retailer hereunder shall be resold by Retailer only at the Retail Location(s) set forth on the last page hereof through face-to-face meeting between the Retailer's customers and any of Retailer's personnel and not through mail orders, the Internet, or other sales methods unless authorized in writing by O'Neill Clothing. Notwithstanding any other provisions of this Agreement, Retailer shall not resell Merchandise to any third party for further or subsequent resale. In the event of any breach by Retailer of the preceding provisions of this paragraph 1, O'Neill Clothing, in addition to all its other remedies pursuant to this Agreement or provided by law, may demand the immediate return of any O'Neill merchandise remaining in Retailer's possession, at Retailer cost, and/or withhold further shipments of merchandise to Retailer notwithstanding O'Neill Clothing's prior acceptance of purchase orders thereof. Additionally, in consequence of the threatened damage to O'Neill Clothing's reputation and goodwill which may result from Retailer's breach of said provisions, Retailer agrees that O'Neill Clothing cannot be reasonably or adequately compensated in damages for such breach, therefore, O'Neill Clothing shall be entitled to injunctive relief which may include, without limitation, restraining Retailer from reselling the Merchandise other than as specifically provided for herein. O'Neill Clothing shall not be obligated to sell Merchandise to Retailer for resale at any of its other Retail Locations, if any, other than Retail Location(s) identified on the last page hereof. Any new Retail Location must be approved in writing by O'Neill, in advance.

Retailer may not advertise the O'Neill brand or O'Neill products via newspaper, radio, magazine, etc. without written permission from O'Neill Clothing. O'Neill Clothing shall also have the right to preapprove all such advertising layouts, copy, etc. in advance.

Nothing contained herein shall limit the right of O'Neill Clothing to deal with other retailers, agents, representatives or distributors regardless of their proximity to the Retailer. O'Neill Clothing makes every effort to comply with each customer's instructions as stated in their "Routing Packing, and Labeling manual." Therefore, O'Neill Clothing will not accept any deductions from invoices due to any sort of PO/routing violations, unless previously agreed to. To clarify, O'Neill Clothing must be placed on "exempt status" with regard to any and all "handling charges", or "penalty charges".

The preparation of a purchase order by a sales representative of O'Neill Clothing or the submission of a purchase order to O'Neill Clothing shall not constitute acceptance of such order until such time as it is formally approved by O'Neill Clothing at its principal place of business. All purchase orders are subject to the terms and conditions of this Retailer Agreement. Any cancellation of a purchase order by Retailer, or any part thereof, shall not be effective unless O'Neill Clothing receives written notice of such cancellation at least 60 days prior to the scheduled shipping date. Retailer shall be obligated to pay to O'Neill Clothing a restocking fee of 20% of the amount of the purchase order for the products purchased if the entire order is cancelled, or 20% of the amount reflected on the purchase order for the product items cancelled if only selected items on the purchase order are cancelled. Retailer shall have no right to cancel all or any part of a purchase order less than 60 days prior to the scheduled shipping date.

Retailer shall notify O'Neill Clothing immediately upon discovery of any unauthorized use of the O'Neill Clothing trademarks, insignias, or other means of identification, but the Retailer shall not take any action of any kind with respect to any such use without the prior written authorization of O'Neill Clothing. Nothing contained herein shall grant the

Retailer any right to the O'Neill Clothing trademarks, insignias, or other means of identification except the right to display the O'Neill Clothing logo at the Location (or other location as may be identified on the last page here of).

Disclaimer and limitation of liability: O'Neill Clothing grants no warranties or conditions, express, implied statutory or otherwise, regarding the merchandise, its fitness for any purpose, its merchantability, or otherwise. O'Neill Clothing shall not be liable for any special, consequential, punitive, incidental, or indirect damages, lost profits, the cost of procurement of substitution products or services however caused or on any theory of liability arising in any way out of this agreement. Retailer agrees that O'Neill Clothing's liability under this agreement, regardless of the form of action, shall in no event exceed the price paid by the Retailer for the subject merchandise. This limitation shall apply even if O'Neill Clothing has been advised in advanced of the possibility of such damages and notwithstanding any failure of essential purposes of any limited remedy provided for herein.

O'Neill Clothing shall not be responsible for any delays or failure to perform caused by government orders or requirements, transportation conditions, riots, fires, weather, acts of God, or any other cause beyond the reasonable control of O'Neill Clothing.

The relationship of O'Neill Clothing and Retailer established by this agreement is that of vendor-purchaser and nothing contained herein shall be construed so as to create a partnership, joint venture or franchiser-franchisee relationship. Retailer agrees that any and all information it receives from O'Neill Clothing regarding pricing specific to Retailer for products sold to Retailer bearing the "O'Neill" trademark ("Retailer Pricing") is proprietary and confidential information and constitutes a trade secret of O'Neill Clothing. Any such information regarding Retailer Pricing shall be maintained in strict confidence and shall not be disclosed to any third party by Retailer or its personnel or agents without the express written consent of O'Neill Clothing. Any disclosure or unauthorized use of such information regarding Retailer Pricing will cause irreparable harm to O'Neill Clothing, and without limiting the other legal or equitable remedies to which O'Neill Clothing may be entitled, Retailer agrees that injunctive relief may be obtained against Retailer, and O'Neill Clothing may immediately discontinue any discounts or other Retailer Pricing benefits.

The provisions set forth herein may not be supplemented, modified or amended in any manner, except by an instrument in writing stating that it is a supplement, modification or amendment of these provisions and signed by each of the parties hereto.

Any controversy of claim arising out of our relating to this Agreement, or the breach thereof, shall be settled by binding arbitration in the County of Orange, California, in accordance with the rules of American Arbitration Association then in effect and the prevailing party shall be entitled to recover his actual costs and attorney's fees paid or incurred in connection with the arbitration. Neither party hereto, nor any of their agents, have made any statement, promises or agreements verbally or in writing in conflict with the terms set forth herein. Any and all representations by either of the parties of their agents made during negotiations, which representations are not contained herein, shall not be binding upon either of the Parties hereto. This Agreement contains the entire Agreement between the parties. Time is the essence for this Agreement and all of the terms, provisions, covenants and conditions hereof.

Retailer shall comply with all applicable laws and regulations and obtain all permits and licenses or other forms of clearance from governmental or regulatory agencies necessary for the conduct of Internet/electronic commerce sales in accordance with this agreement. This shall include, but is not limited to, the collection and payment of all applicable sales taxes resulting from the sale of merchandise by Retailer.

Retailer may not assign any of Retailer's rights or delegate any of its obligations under this Agreement, without the prior written consent of O'Neill Clothing. All assignments of rights are prohibited, whether they are voluntary or involuntary, by merger, consolidation, dissolution, operation of law, or any other manner. A change of control is deemed an assignment of rights and "merger" refers to any merger in which Retailer participates, regardless of whether it is the surviving or disappearing entity. Any purported assignment of rights or delegation of obligations in violation of this section is void. This agreement may be executed and delivered by facsimile or electronic signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.