

DIRECT DISPATCH TERMS AND CONDITIONS

Last updated 1 October 2018

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following expressions shall have the following meanings unless the context otherwise requires:

“Applicable Laws”	all applicable statutes, laws, rules, regulations, orders, including without limitation European Community Directives and Regulations, British and Irish and European Community standards, Codes of Practice and bylaws, in force from time to time relating to the Contract or the Goods
“Business Day”	any day other than a Saturday, Sunday or bank or public holiday in England
“Code Of Conduct”	the Qurate Retail Group Global Business Partner Code of Conduct as may be provided to the Seller and/or available at www.qvcuk.com and as updated from time to time
“Contract”	an agreement for the purchase of goods by QVC from the Seller on a direct dispatch basis which is made by way of the Seller accepting a Purchase Order in accordance with Condition 2.2 and is comprised of (in the following order of precedence) the Purchase Order, these Conditions including the Fulfilment Terms (both as may be amended by QVC from time to time), the Data Processing and Confidentiality Agreement, the Vendor Manual and Quality Assurance Requirements
“Customer”	a customer who orders Goods from QVC
“Data Processing and Confidentiality Agreement”	the agreement entitled as such made between the Seller and QVC
“Fulfilment Terms”	any special fulfilment terms applicable to a Purchase Order as set out in Annex 1 to these Conditions
“Goods”	any items (including any of them or any part of them) which the Seller sells to QVC and delivers to a Customer on behalf of QVC under any Contract
“Marks”	the trade and service marks, trade names, patents, designs and copyrights registered, owned, licensed or used by the Seller in connection with the Goods from time to time
“Multi-buy Delivery Reduction”	the reduced postage and packaging cost applicable when identical items are purchased by an individual Customer in a single order and delivered to the same address
“Purchase Order”	QVC’s direct dispatch purchase order for the Goods to which these Conditions apply which may be issued, at QVC’s discretion, in electronic format or in such other format as may be agreed between the parties
“QA Requirements”	QVC’s quality assurance requirements relevant to the Goods which are the subject of this Contract, as provided to the Seller or available at www.qvcuk.com and as updated from time to time by QVC
“QPlatforms Deduction”	a charge payable by Seller for contribution to continued investment and innovation of QVC platforms
“QVC”	QVC UK, an unlimited company registered in England and Wales (company number 2807164) whose registered office is at Building 8, Chiswick Park, 566 Chiswick High Road, London W4 5XU
“QVC Affiliate”	QVC, Inc. or any subsidiary undertaking (as defined in sections 1159 and 1162 of the Companies Act 2006) of QVC Inc. or any other person controlled by, controlling or under the same control as QVC Inc., either directly or indirectly, other than QVC
“Seller”	the seller referred to in the Purchase Order
“Specification”	in relation to any Goods, the technical specifications of those Goods, all preparatory, design and development materials which relate to those Goods, all information of any description whether in written, oral or electronic form which explains the structure, design, operation, functionality of those Goods and all information of any description whether in written, oral or electronic form which relates to the maintenance and/or support of those Goods

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"Vendor Chargebacks"	the vendor chargebacks notified to the Seller as in force at the date of the Contract and payable by the Seller to QVC in accordance with the Vendor Manual
"Vendor Manual"	QVC's Direct Dispatch Vendor Manual as provided to the Seller and as updated from time to time by QVC

- 1.2 The headings to these Conditions shall not affect their construction.
- 1.3 Any reference to "in writing" or "written" includes reference to any communication effected by facsimile transmission or (unless provided to the contrary) electronic mail or any comparable means.

2. CONTRACT FORMATION

- 2.1 Purchase Orders may be issued by QVC from time to time by e-mail or by such other means as may be agreed between the parties. No Goods shall be ordered by QVC or supplied by the Supplier except pursuant to a Purchase Order.
- 2.2 By accepting a Purchase Order the Seller accepts that the sale of Goods to QVC and the delivery of those Goods to Customers on behalf of QVC under that Purchase Order shall be subject to the terms of a Contract. The Seller shall be deemed to have accepted any Purchase Order which it does not reject within 7 days of it being sent to the Seller.
- 2.3 No other terms will apply to any Contract including but not limited to any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, Specification, delivery note, invoice or similar document unless such terms are agreed in writing (but not by electronic mail) and signed by a director of QVC.

3. THE GOODS AND INSPECTION

- 3.1 The Seller shall supply samples of the Goods to QVC so that QVC may carry out a first piece inspection of such samples.
- 3.2 The Seller shall manufacture or obtain the Goods and have available the quantity of such Goods specified by the Purchase Order by the date specified in such Purchase Order.
- 3.3 The Seller grants QVC, its servants and agents the right upon reasonable prior written notice to access the premises where the Goods are stored, to ensure the compliance of the Seller and the Goods with the Contract.
- 3.4 The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and QVC will be entitled to reject the Goods or terminate the Contract under Condition 12.1.3 if the Goods are not in conformance with the Contract.

4. GRANT OF RIGHTS TO SELL AND MARKET

- 4.1 The Seller hereby grants to QVC the irrevocable worldwide right by all means now known or hereafter existing to:
- 4.1.1 use the Marks to market, promote the sale of and sell the Goods;
- 4.1.2 use, perform, play, synchronise and/or demonstrate, as applicable, the Goods and any contents or part thereof; and
- 4.1.3 perform, play, display, transmit, broadcast or otherwise use as necessary any and all materials provided by the Seller to QVC for QVC's use in the marketing and promotion of the Goods and/or QVC.
- 4.2 Notwithstanding the grant of rights to QVC under Condition 4.1, nothing in these Conditions or any Contract shall oblige QVC to market, promote or sell the Goods or to broadcast or otherwise make any particular claim about the Goods.

5. DELIVERY TO CUSTOMERS

- 5.1 The Seller shall store the Goods on behalf of QVC and in accordance with any storage conditions specified by QVC until QVC sends confirmation to the Seller that such Goods have been purchased by a Customer. QVC shall send such confirmation in writing together with the documentation that the Seller must send to each Customer.

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- 5.2 Upon receipt of the confirmation and documentation referred to in Condition 5.1 the Seller shall arrange for the Goods, along with any applicable documentation to be delivered to the Customer and (if applicable) installed within the time specified by QVC in the Fulfilment Terms.
- 5.3 In the event of any actual or anticipated delay in delivery, the Seller will promptly inform QVC in writing by the fastest possible means of the Seller's earliest possible delivery date. If the Goods or any part thereof are not delivered (or QVC believes are not capable of delivery or (if applicable) installation) within the time specified by QVC, QVC may exercise any of the remedies set out in Condition 11.
- 5.4 Every Business Day the Seller shall provide QVC by electronic mail (in a format and by a delivery method specified by QVC) the following information:
 - 5.4.1 Customer order number
 - 5.4.2 Date of shipment of the Goods to the Customer
 - 5.4.3 Date Customer is contacted to arrange installation (if applicable)
 - 5.4.4 Installation date agreed with Customer (if applicable)
 - 5.4.5 Actual date of installation (if applicable)

6. PASSING OF PROPERTY AND RISK

Property in the Goods shall pass from the Seller to QVC immediately prior to the purchase of such Goods by a Customer. Risk in the Goods shall pass from the Seller to the Customer upon delivery of the Goods to the Customer pursuant to Condition 5.2. For the avoidance of doubt, QVC shall at no point hold the risk in the Goods.

7. PRICE

- 7.1 The price for the Goods will be the price stated in the Purchase Order and, unless otherwise stated in that Purchase Order, will be:
 - 7.1.1 inclusive of all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and any duties, imposts, levies or taxes other than value added tax;
 - 7.1.2 subject to the Purchase Order delivery charge (and any Multi-Buy Delivery Reduction) for delivery of the Goods to the Customer; and
 - 7.1.3 fixed for the duration of the Contract (defined as a single Purchase Order).
- 7.2 No variation in the price or extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of QVC.

8. TIME FOR PAYMENT AND INVOICING PROCEDURE

- 8.1 The Seller agrees that at the end of each month, QVC shall raise a self-billing invoice for the price of all Goods sold to Customers during such month plus value added tax (the date such invoice is raised being the tax point), in accordance with its self-billing procedure as notified to the Seller from time to time. The Seller agrees not to raise VAT invoices for Goods covered by the Contract and to promptly notify QVC if it ceases to be registered, transfers its business as a going concern or becomes registered under another VAT number.
- 8.2 At the end of each month, QVC shall issue a debit note for the total value of the Multi-buy Delivery Reduction and such debit note shall be set off against the next payment due (under the provisions of Condition 8.5).
- 8.3 QVC shall pay the Seller by the last Business Day of the month following the month in which the invoice was raised in accordance with Condition 8.1.
- 8.4 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over HSBC Bank plc base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods to Customers as a result of any sums being outstanding.
- 8.5 Without prejudice to any other right or remedy, QVC will be entitled but not obliged at any time or times without notice to the Seller to set off any liability of the Seller to QVC against any liability of QVC to the Seller (in either case however arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency).

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- 8.6 Payment of each Seller's invoice shall be subject to the QPlatforms Deduction by QVC, such charge equal to 0.75% of the price stated in the Purchase Order plus VAT for each unit of Goods shipped and received by QVC. QPlatforms Deductions shall be applied regardless of the subsequent disposition of the Goods, including, without limitation, any and all returns of such Goods to Seller for any reason, without credit or refund to Seller.

9. CUSTOMER RETURNS

- 9.1 Goods returned during QVC's no fault returns period:
- 9.1.1 If a Customer contacts QVC to notify QVC that they wish to return the Goods under QVC's no fault returns policy, QVC shall promptly notify the Seller.
- 9.1.2 If a Customer contacts the Seller to notify the Seller that they wish to return the Goods under QVC's no fault returns policy, the Seller shall promptly notify QVC.
- 9.1.3 Upon receipt of a notification from QVC pursuant to Condition 9.1.1 or from a Customer pursuant to Condition 9.1.2, QVC or the Seller (as specified in the Fulfilment Terms) shall promptly contact the Customer to arrange collection of the Goods within five to seven working days and shall notify the other party when such Goods have been collected.
- 9.1.4 The Seller shall either credit or refund QVC in the same way as for rejected Goods as set out in Condition 11.2 for the price invoiced to QVC in respect of Goods returned by Customers pursuant to this Condition 9.1.
- 9.1.5 If any Goods are returned directly to QVC by Customers pursuant to QVC's no fault returns policy, QVC shall return such Goods to the Seller at QVC's cost.
- 9.2 Goods returned as faulty:
- 9.2.1 If upon delivery a Customer rejects any Goods as faulty, the Seller shall promptly notify QVC and shall arrange for replacement Goods to be delivered to the Customer within 48 hours of delivery of the faulty Goods at the Seller's cost.
- 9.2.2 If a Customer contacts QVC within the twelve month warranty period specified in Condition 11.1.4 to notify QVC that the Goods are faulty, QVC shall promptly notify the Seller.
- 9.2.3 If a Customer contacts the Seller within the twelve month warranty period specified in Condition 11.1.4 to notify the Seller that the Goods are faulty the Seller shall promptly notify QVC.
- 9.2.4 In the event of a notification by a Customer as referred to in Condition 9.2.2 or 9.2.3, the Seller shall collect the faulty Goods from the Customer at the Seller's cost and, at QVC's election, either (i) replace or repair such Goods free of charge pursuant to Condition 11.1.4 or (ii) raise a credit note or refund QVC in accordance with Condition 11.2 all amounts paid by QVC for such Goods.
- 9.2.5 If any Goods are returned directly to QVC by Customers as faulty, whether within QVC's no fault returns policy period or thereafter, QVC shall return such Goods to the Seller at the Seller's cost and the Seller shall refund QVC in accordance with Condition 11.2 all amounts paid by QVC for such Goods.
- 9.2.6 The Seller shall co-operate at the Seller's cost with QVC in investigating the cause of any fault claimed in the Goods.

10. WARRANTIES AND COVENANTS OF SELLER

- 10.1 In addition to and without prejudice to any and all other warranties, whether express, arising by operation of law or implied, the Seller represents, warrants and covenants to QVC that:
- 10.1.1 the Seller possesses all licences, permits, rights, power, and consents required, necessary or desirable to enter into the Contract and to grant to QVC the rights granted by the Contract;
- 10.1.2 the Seller has obtained all consents, licences, releases and otherwise cleared all rights in any and all material provided by the Seller to QVC for the use of QVC in the marketing and promotion of the Goods and/or QVC;
- 10.1.3 the Seller has complied with all Applicable Laws relating to the Goods and to prices, advertising, allowances, discounts and other benefits offered by the Seller;
- 10.1.4 the Seller's performance of the Contract and all Goods including but not limited to the production, sale, packaging, labelling, safety, import and transport of the Goods and all representations and advertising by the Seller made in connection with the Goods shall at all times comply with all Applicable Laws;
- 10.1.5 where applicable, reasonable and representative tests as prescribed by Applicable Laws have been performed or will be performed before delivery of the Goods to the Customer;
- 10.1.6 the Goods are of satisfactory quality, conform to all instructions, Specifications, drawings, data or samples, and are of the quality, grade and content as represented by the Seller or its sub-contractors

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or as otherwise provided in the Purchase Order and are fit for any purpose made known to the Seller by QVC;

- 10.1.7 the Goods are new and free from all defects (including without limitation latent defects in workmanship, material and design) and shall not have been reworked, rebuilt or refurbished;
- 10.1.8 all manufacturers' warranties are effective and enforceable by both QVC and the Customer(s);
- 10.1.9 all Marks which are part of or appear in connection with the Goods are valid and genuine and the Goods (including without limitation all written, printed or other works constituting a part of or appearing on such Goods) and the promotion, sale, performance or other use of the Goods by QVC or the Customers will not infringe any intellectual property rights of any third parties;
- 10.1.10 the Seller has the right and authority to grant the right under Condition 4 to QVC and QVC's use of the Marks will not infringe the intellectual property rights of any third party;
- 10.1.11 neither the Goods nor any component part of them is subject to any duty, tariff, value added tax or penalty except as previously disclosed in writing by the Seller to QVC;
- 10.1.12 the Goods and similar goods are not and have not been subject to product liability claims or product recall notices;
- 10.1.13 the Seller shall maintain for the life of the Goods public liability insurance coverage on the Goods, including full products liability, infringement and advertising injury, for not less than £2,000,000 per Contract on standard terms and with an insurance company of repute acceptable to QVC and shall at the request of QVC promptly provide QVC with a certificate of insurance naming QVC as an additional insured;
- 10.1.14 the Seller shall comply at all times with the Code of Conduct.

11. REMEDIES OF QVC

- 11.1 Without prejudice to any other rights or remedies of QVC (whether express or implied), if the Seller breaches any terms of the Contract or QVC terminates the Contract in accordance with Condition 12.1.3 then QVC may (but will not be obliged), whether or not the Goods have been accepted:
 - 11.1.1 return the Goods to the Seller at the Seller's expense and risk and obtain a credit or refund pursuant to Condition 11.2;
 - 11.1.2 recover from the Seller any additional expenditure reasonably incurred by QVC in obtaining the Goods or goods equivalent to the Goods in substitution from another supplier;
 - 11.1.3 claim damages for any additional costs, loss or expenses incurred by QVC which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods on the due date or at all;
 - 11.1.4 for a period of twelve months from the date of purchase of the Goods by a Customer in respect of Goods which do not conform with the provisions of Conditions 10.1.6 or 10.1.7, oblige the Seller, at QVC's option, forthwith to issue a refund or repair or replace such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of this Condition for the unexpired portion of the twelve month period; and/or
 - 11.1.5 impose the applicable Vendor Chargeback.
- 11.2 Any Goods rejected by QVC under the Contract are returned to the Seller at the Seller's expense and risk and QVC shall at its option receive either a credit or refund of all amounts paid by QVC for such Goods, including without limitation any delivery expenses incurred by QVC. If QVC shall elect to receive a refund, the Seller will pay QVC such sums within thirty (30) days of QVC's request. In the event that QVC shall opt to receive a credit, QVC may apply such a credit toward any amounts then due or which may become due to Seller. The Seller authorises QVC to return Goods without additional authorisation, and the Seller agrees to accept such returns. Goods returned or rejected by QVC are not to be replaced by the Seller without the prior written approval of QVC.
- 11.3 The Seller hereby agrees to indemnify, keep indemnified and hold harmless QVC from and against any and all costs (including the cost of enforcement), expenses, liabilities, obligations, injuries, claims, damages, actions, demands, proceedings or legal costs (on a full indemnity basis), judgements and loss which QVC incurs or suffers as a consequence of a direct or indirect breach or alleged breach or negligent performance by the Seller or failure or delay in performance of the terms of the Contract or any act or omission of its sub-contractors.
- 11.4 Each right or remedy of QVC under the Contract is without prejudice to any other right or remedy of QVC under this or any other contract.

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12. TERMINATION

- 12.1 QVC may terminate the Contract in respect of all or part of the Goods with no liability or obligation to the Seller and without prejudice to any other right, remedy or relief available to QVC if:
- 12.1.1 QVC is notified that any Goods infringe or are alleged to infringe the intellectual property rights of any third party; or
- 12.1.2 the Seller is in breach of the Code of Conduct; or
- 12.1.3 the Seller is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, fails to remedy such breach within 30 days' service of a written notice from QVC, specifying the breach and requiring it to be remedied. Failure to deliver Goods on the due date in accordance with Condition 5.3 is a material breach of the Contract which is not capable of remedy; or
- 12.1.4 the Seller becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed, has any distraint, execution or other process levied or enforced on any of its property; or ceases to trade or appears in the reasonable opinion of QVC likely or is threatening to cease to trade within 30 days; or
- 12.1.5 the Seller has a change in its management and/or control as defined by section 416 Income and Corporation Taxes Act 1988; or
- 12.1.6 the equivalent of any of Conditions 12.1.4 to 12.1.5 above occurs to the Seller in another jurisdiction to which the Seller is subject.
- 12.2 The Seller may not cancel the Contract. QVC is entitled to cancel the Contract in whole or in part by giving written notice to the Seller at any time prior to delivery of the Goods to a Customer in which event provided that the Seller is unable, having made all reasonable endeavours, to resell the Goods, QVC's sole liability will be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 12.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Seller or QVC accrued prior to termination and the conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13. RECORDS AND AUDIT

The Seller agrees to keep true and accurate records and books of account containing all data necessary for the determination of the number of Goods delivered to and received by Customers and the price payable under the Contract. Such records and books of accounts shall be open at all reasonable times during business hours on Business Days for inspection and copying by QVC or its duly authorised agent on demand. The Seller shall preserve all relevant records and accounts and make the same available for inspection by QVC for the duration of the Contract and a period of not less than 6 years thereafter.

14. NO ASSIGNMENT BY SELLER

Seller shall not assign or sub-contract or otherwise deal, whether in whole or in part, with any rights, claims or obligations under the Contract without the prior written consent of QVC and provided that the Seller will remain liable for the performance of such obligations.

15. FURTHER ASSURANCE BY SELLER

The Seller shall at its cost and expense provide QVC and the Customer with any and all documents requested or required by QVC from time to time to vest any rights granted hereunder in QVC or the Customer and for the protection and enforcement of the same and/or to protect and support the representations, warranties and/or covenants contained in the Contract.

16. LAW AND JURISDICTION

This Contract shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the English courts. For the avoidance of doubt, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract. The parties agree that any provisions of the Electronic Commerce (EC Directive) Regulations 2002 (the "Regulations") that would otherwise apply to this Contract shall not apply to the extent that the Regulations allow the parties to exclude their application.

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17. WAIVER

The waiver by QVC of any of its rights or remedies or any term in respect of any event of default shall not be deemed a waiver in respect of any prior or subsequent event of default.

18. SEVERABILITY OF PROVISIONS

In the event of any term of the Contract being adjudged or otherwise deemed to be void and/or unenforceable then it shall be severed and struck out of the Contract but all of the other provisions shall survive in full force and effect to the extent necessary to give effect to the intention of the parties.

19. ENTIRE AGREEMENT

The Contract and the Specification contain all the terms which QVC and the Seller have agreed in relation to the Goods. The Seller acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of QVC which is not set out in those documents. Nothing in this Condition 19 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently. Notwithstanding any other term of this Contract the terms of this Contract do not supersede or take precedence over any agreement between the Seller and a QVC Affiliate.

20. TIME FOR PERFORMANCE

- 20.1 Time for performance of all obligations of the Seller under the Contract is of the essence.
- 20.2 Time for performance of all obligations of QVC under the Contract is not and may not be made by notice of the essence.

21. RIGHTS OF THIRD PARTIES

Customers have the right to enforce only Conditions 6, 9, 10 and 15 in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. QVC and the Seller may rescind or vary any of the terms of the Contract without requiring the consent of Customers. Except as stated in this Condition 21, QVC and the Seller do not intend that any term of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1998 by any person not a party to it.

22. NOTICES

Any notice, demand or communication in connection with the Contract will be in writing and may be delivered by hand, first class post or Special Delivery post (but not by e-mail), addressed to the recipient at its registered office and will be marked for the attention of Legal Counsel unless otherwise advised in writing by either party. Notices will be deemed to be received on the earlier of: (a) 3 Business Days after being sent or (b) on proof of delivery.