

# Unimarket Supplier Master Subscription Agreement

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**Collaborative Procurement System**



# Supplier Master Subscription Agreement

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## *Introduction*

Welcome to Unimarket™.

This is a legal agreement between you and Unimarket Holdings Ltd and its subsidiaries (collectively, "Unimarket"). This Agreement describes the terms and conditions for using the Unimarket™ Collaborative Procurement system ("Unimarket™"). This document governs your use of the site.

By registering as a user of Unimarket™ or by using the services available from the domain and sub-domains of <http://www.unimarket.com> (the "Site"), you agree to follow and be bound by the following terms and conditions. Your use of Unimarket™ as set forth below is conditional upon your acceptance of all the terms and conditions contained in this Agreement. Please read this agreement carefully before continuing with registration. By using and/or accessing Unimarket™ in any capacity you hereby accept the terms and conditions of this agreement in its entirety.

By accepting this Agreement, you also agree that your use of other Unimarket™ branded web sites will be governed by the Supplier Master Subscription Agreement and Privacy Policy posted on those web sites. The terms of this Agreement are effective upon your acceptance.

## *Privacy Policy*

**Please note:** The Unimarket Privacy Policy, which may be modified from time to time at the sole discretion of Unimarket, is described in a separate document and is hereby incorporated by reference. By accepting this Agreement and by continuing to use the Site, you are also agreeing to all of the terms and conditions of the Privacy Policy. Please review the Unimarket Privacy Policy, which also governs your use of Unimarket™, to understand our practices.

## *Communications*

By accepting these terms and conditions you consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on this site. You agree that all agreements, notices, disclosures and other communications provided to you electronically satisfy any legal requirement that the communication be in writing.

## *Password and Account Protection*

- You agree and understand that you are solely responsible for maintaining the confidentiality of your Unimarket password that you use to access the Unimarket™ Site.
- Accordingly, you agree that you will be solely responsible for all activities on the Unimarket™ Site that occur under your account.

## *Unimarket Code of Conduct*

Unimarket provides a marketplace to facilitate the selling and buying process for its members. Unimarket does not participate in the sale of any items through the site and provides only the communication medium and means (i.e., the Site) to permit transactions through the Site. You agree not to involve, or attempt to involve, Unimarket in any dispute or in the resolution of disputes that arise between you and another user of Unimarket™ as a result of the services provided. Further, you agree to indemnify and hold Unimarket (and our officers, directors, agents, subsidiaries, joint ventures and employees), harmless from any claim or demand, including reasonable attorneys' fees, arising out of disputes between you and another user of Unimarket™ as a result of the services provided.

## General Rules

While using the Site, you will not:

- Use the Site if you are not able to form legally binding contracts or are temporarily or indefinitely suspended from our Site.
- Manipulate the price of any item or interfere with other users' listings.
- Directly or indirectly circumvent or manipulate our fee structure, the billing process, or fees owed to Unimarket.
- Post false, inaccurate, misleading, defamatory, libelous content (including personal information), or any content which would otherwise be deemed illegal under the laws of the United States of America or any jurisdiction where the content can be viewed or accessed.
- Take any action that may undermine the feedback or ratings systems (such as displaying, importing or exporting feedback information off of the Site or for using it for purposes unrelated to Unimarket).
- Transfer your Unimarket™ account (including feedback) and User ID to another party without our written consent.
- Distribute or post spam, chain letters, or pyramid schemes.
- Distribute viruses or any other technologies that may harm Unimarket™, or the access, interests or property of Unimarket™ users.
- Copy, modify, or distribute content, copyrights and/or trademarks from the Site.
- Harvest or otherwise collect information about users, including email addresses, without their express written consent.

## Seller Obligations

- You must not post content or items in an inappropriate category or area within Unimarket™.
- You must not post or offer for sale any items that: are counterfeit or stolen; may infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising); contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; or create liability for Unimarket or cause Unimarket to lose (in whole or in part) the services of our Internet Service Providers or other suppliers.
- You must not list any items associated with our Restricted Items list.
- You must be legally and physically able to sell items that you list on the Site
- For each order, you must confirm that your items matches the item sought by the buyer (including the terms of sale requested)
- You must deliver items purchased from you in accordance with the terms and timing promised, unless the buyer fails to meet the posted terms, or you cannot authenticate the buyer's identity after reasonable efforts to do so.
- You may not consummate any transactions through the Site that, by paying any applicable fees to Unimarket, could result in the violation of any applicable law, statute, ordinance or regulation.
- With respect to BidTogether™ collaborative events that you initiate and offer to buyers through Unimarket™, you agree that:
  - You accept that the final discount achieved through a particular collaborative event is effective for all bidders participating in that event even if they entered their bid/order at a higher price level. The final discounted price is effective only for that particular collaborative event and only to those bidders/buyers that participated in that particular event;
  - If a bidder/buyer checked out prior to the end of the event using the "Checkout Now" or the "Checkout on a Given Date" functionality, then they would receive the event price current at the time that they checked out;
  - You may not alter a posted collaborative event once it is live;
  - You have the ability to close the event early, but must honor to the participating bidders/buyers the pricing current at the time that you close the event.

### *Misusing Unimarket*

Any problems, offensive content, and policy violations should be reported immediately to the Unimarket support team via [support@unimarket.com](mailto:support@unimarket.com). We may suspend or terminate your account if we suspect that you have used the Site to engage in any fraudulent activity or if you have breached any of the terms of this Agreement.

Without limiting other remedies, we may

- Limit, suspend, or terminate our service and user accounts or prohibit access to our website.
- Remove hosted content
- Take technical and legal steps to prohibit access to users if they are creating problems, possible legal liabilities, or acting inconsistently with the letter or spirit of our policies.
- We also reserve the right to cancel unconfirmed accounts.

### *Fees and Services*

Unimarket offers two levels of service for sellers: Lite and Premium. Lite suppliers can register for free and can receive orders from Buyers via email. Lite suppliers will provide Unimarket with one (1) email address for communications including Buyer orders.

Unimarket's second level of service for sellers is the Premium level, which is a fee-based service. Please refer to the Supplier Schedule of Fees document for the current premium supplier pricing. The Schedule of Fees and fee policies may be modified from time to time at Unimarket's sole discretion.

- Premium Sellers will designate one (1) point-of-contact person to serve as liaison with the Unimarket support team. Unimarket supports Premium Sellers through these designated points of contact.
- Sellers will be charged a fee (based on the Schedule of Fees) dependant on the volume of consolidated sales that go through the Unimarket site for that particular seller (as calculated on a monthly basis).
- Trading fee rates (based on the Schedule of Fees) may change from time to time; users will be notified at least fourteen days in advance of these changes being implemented. All changes will be posted on the site.
- We may choose to temporarily change the fees for our services for promotional events (for example, free listing days) or new services, and such changes are effective when we post the temporary promotional event or new service on the Site.
- Unless otherwise stated, all fees are quoted in, and shall be paid in, local currency. You are responsible for paying all fees and applicable taxes associated with the Site in a timely manner, but not to exceed thirty (30) days, with a valid payment method.
- If your payment method fails or your account is past due, a late fee of the lesser of two percent (2%) per month or the maximum rate permitted by applicable law, shall accrue on all amounts unpaid after thirty (30) days. We may also collect fees owed using other collection mechanisms. (This includes charging other payment methods on file with us, and retaining collection agencies and/or legal counsel.)

### *Credit Cards*

- When the seller allows buyers to pay on credit cards, Seller must use its own merchant ID.
- Credit Card payments can be conducted 'manually' or through a third party clearing service.
- While Unimarket may facilitate payment for some items by credit card, Unimarket is not involved in the transaction itself, and responsibility for any refund rests with the seller.

### *Content License*

- By providing us content or posting it to the Site, you automatically grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub licensable (through multiple tiers) right to exercise the copyright, publicity, and database rights (but no other rights) you have in the content, in any media known now or in the future. (Unimarket requires these rights to be able to host and display your content).
- You warrant that you are authorized to use any and all content that you upload to the Site, whether or not you own it, and will indemnify and hold Unimarket, its directors, officers, employees and agents harmless from any liability or dispute which may arise over the legal owner of such content regarding its use on the Site.
- Listings are not pre-screened for content. Unimarket reserves the right to remove any content that it deems unsuitable or in breach of this Agreement and the Unimarket™ privacy policy.
- If you set up links or link content to another site, you are solely responsible for any changes to that content and for remaining in compliance with the terms and conditions of this Agreement and the Unimarket Privacy Policy.

### *Liability*

- Unimarket shall not be responsible for other users' actions or inactions, including items they post.
- Where applicable, you acknowledge that Unimarket is not a traditional auctioneer, and therefore not governed by the Auctioneers Act, 1928 (or by similar laws). Instead, the Site is merely a passive conduit that permits online purchases and sales by buyers and sellers.
- We are not involved in the transaction between buyers and sellers. We have no control over and do not guarantee the content, quality, safety, worthiness or legality of items advertised, the truth or accuracy of listings, that any item will meet your requirements or expectations, the ability of sellers to sell items, the ability of buyers to pay for items, the identity of any buyer, or that a buyer or seller will actually complete a transaction.
- Responsibility for the content of advertisements appearing on this Site (including hyperlinks to advertisers own websites) rests solely with the advertisers. The placement of such advertisements on the website does not constitute Unimarket's recommendation or endorsement of the advertised product or service. Each advertiser is solely responsible for any representation made in connection with its advertisement.
- We cannot guarantee continuous or secure access to our services, and operation of the Site may be interfered with by numerous factors outside of our control. Accordingly, to the extent legally permitted, we exclude and disclaim all implied warranties, terms and conditions including, but not limited to, any warranties or merchantability of fitness for a particular purpose.
- WE ARE NOT LIABLE FOR ANY LOSS OF MONEY, PROFITS, BUSINESS, DATA, ANTICIPATED SAVINGS, GOODWILL, OR REPUTATION, OR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF YOUR USE OF OUR SITE. Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you. Notwithstanding any other provision of this Agreement, if we are found to be liable, our liability to you or to any third party is limited to the greater of (a) the total fees you paid to us in the 12 months prior to the action giving rise to the liability, and (b) \$100.

### *Warranties*

- Unimarket warrants that all software, programming and any other goods produced by Unimarket under this Agreement are free from material defects in workmanship and quality.
- OTHER THAN THE FOREGOING WARRANTIES, UNIMARKET PROVIDES THE SERVICE "AS IS," AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED AND STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING.

### ***Indemnity***

You will indemnify and hold Unimarket (and our officers, directors, agents, subsidiaries, joint ventures and employees), harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement, or your violation of any law or the rights of a third party.

### ***Release***

If you have a dispute with one or more users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, disclosed and undisclosed, arising out of or in any way connected with such disputes.

### ***Intellectual Property***

All Intellectual Property owned or held by Unimarket and its licensors prior to the date of this Agreement including, but not limited to, all Intellectual Property relating to Unimarket™ is the sole property of Unimarket and its licensors, and nothing within this Agreement will grant User any right, title or interest in such Intellectual Property. One or more patents owned by Unimarket apply to the Unimarket™ Site and to the features and services accessible to you via the Site.

### ***Access and Interference***

- Unimarket (and its licensors and suppliers) own all proprietary and intellectual property rights in the Site and the software and other material underlying and forming part of the services and the website.
- Much of the information on and structure of, the Site is updated on a real-time basis and is proprietary or is licensed to Unimarket by our users or third parties. All such updates shall be made at the sole discretion of Unimarket.
- The Site contains robot exclusion headers. You agree that you will not use any robot, spider, scraper or other automated means to access the Site for any purpose without our express written permission.

Additionally, you agree that you will not:

- take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure.
- copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for information originally posted by you) from the Site without the prior expressed written permission of Unimarket and the appropriate third party, as applicable.
- interfere or attempt to interfere with the proper working of the Site or any activities conducted on the Site.
- bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Site.

### ***No Agency***

No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

### ***Resolution of Disputes***

If a dispute arises between you and Unimarket, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and Unimarket agree to resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a "Claim") in accordance with one of the subsections below or as we and you otherwise agree in writing.

Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution by emailing [support@unimarket.com](mailto:support@unimarket.com). We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

- Law and Forum for Disputes - This Agreement shall be governed in all respects by the laws of our respective operating companies.
  - For North America, Maryland law, will govern the construction and interpretation of this Agreement in all respects. Any action brought under this Agreement will be brought in the state or federal courts in and for the County of Anne Arundel. THE PARTIES HERETO HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM THE OTHER(S) PERTAINING TO ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. You and Unimarket also expressly acknowledge and agree that all provisions of all state laws adopting in whole or in part, or in any modified form, the provisions of the Uniform Computer Information Transactions Act (“UCITA”) shall be inapplicable to and shall not govern, this Agreement and each party hereby expressly waives any and all rights that may arise under any such law.
- Arbitration Option (New Zealand / Australia) – For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution (“ADR”) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- Arbitration Option (North America) – Any and all claims other than those seeking a temporary restraining order or preliminary injunctive relief shall be submitted to a panel of three arbitrators (one arbitrator if the amount in dispute is less than \$50,000) under the Commercial Rules for Arbitration of the American Arbitration Association then in effect (or the Expedited Rules if the amount in dispute is less than \$50,000). Each of the arbitrators shall be qualified and experienced in information technology systems and related agreements, with at least one arbitrator also being an attorney licensed in the State of Maryland. The arbitrator(s) must base their determination solely on the terms and conditions of this Agreement and the laws of the State of Maryland. The arbitrator(s) shall have the authority to award any remedies that a court may order or grant, except that they shall have no authority to award punitive or exemplary damages or any other damages excluded under the Agreement hereof, and may not in any event make any ruling, finding or award that does not conform to the terms and conditions of this Agreement.
- Improperly Filed Claims - All claims you bring against Unimarket must be resolved in accordance with this Resolution of Disputes Section. All claims filed or brought contrary to the Resolution of Disputes Section shall be considered improperly filed. Should you file a claim contrary to the Resolution of Disputes Section, Unimarket may recover attorneys' fees and costs up to \$1,000, provided that Unimarket has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

### Notices

- Except as explicitly stated otherwise, legal notices shall be served on Unimarket's national registered agent (in the case of Unimarket) or to the email address you provide to Unimarket during the registration process (in your case).
- Notice shall be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to the address provided during the registration process. In such case, notice shall be deemed given three days after the date of mailing.

### ***Partial Invalidity***

If any provision of this Agreement becomes or is held to be invalid, unenforceable or illegal for any reason, and in any respect, that provision shall be severed from the remaining terms and conditions, which shall continue in full force and effect.

### ***General***

- Headings in this agreement are for reference purposes only and do not limit the scope or extent of such section.
- Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this Agreement.
- We may amend this Agreement at any time by posting the amended terms on the Site. Except as stated elsewhere, all amended terms shall automatically be effective 30 days after they are initially posted on the Site. Additionally, we will notify you through the Site's message center tools. Other than the foregoing, this Agreement may not be otherwise amended except in a writing signed by you and us.
- This Agreement sets forth the entire understanding and agreement between us with respect to the subject matter hereof. The following Sections survive any termination of this Agreement: Fees and Services (with respect to fees owed for our services), Release, Content License, Liability, Indemnity and Resolution of Disputes.
- You may not assign this Agreement or any part thereof without Unimarket's written consent, which consent will not be unreasonably withheld or delayed. Consent withheld in case of an assignment to what the non-assigning party considers a competitor will not be deemed unreasonable. Notwithstanding the foregoing, either party may assign this agreement, in whole or in part, without the other party's consent, to a present or future Affiliate or successor. Any permitted assignment of this Agreement shall provide that the provisions of this Agreement shall continue in full force and effect and that the assigning party shall remain responsible for all obligations hereunder.

Should you have any questions concerning this Agreement, or if you wish to contact Unimarket for any reason, please email or write to us at:

#### **Unimarket North America**

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#### **Unimarket New Zealand**

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#### **Unimarket Australia**

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