



## RETAILER AGREEMENT

This Agreement is between Vibratex, Inc. (Vibratex, Inc. 38 Executive Court, Napa, California 94558) hereinafter referred to as "Vibratex" and \_\_\_\_\_, hereinafter referred to as "Retailer".

### **Purpose of Agreement**

Vibratex is the exclusive North America distributor for the Hitachi Living Systems, Ltd. massager product: Magic Wand® Original (HV-260). This Agreement sets forth the terms and conditions by and under which Retailer will be permitted to sell said product line in North America, and is limited to sales in North America.

### **Term of Agreement**

Unless terminated as hereinafter provided, this Agreement shall remain in force indefinitely and govern all transactions between the parties relating to the above referenced product line.

### **Acceptance of Orders**

Retailer may send purchase orders by mail, email, facsimile, or over the telephone. Purchase orders must include Retailer's name, billing address, the address to which the products are to be shipped, and item number, and the number of units being ordered. For e-commerce sites, a full list of URL's featuring the Magic Wand® Original must be provided.

All purchase orders sent by Retailer are subject to acceptance by Vibratex.

Vibratex will use its best efforts to fill accepted orders within 48 to 72 hours and will use its best efforts to advise Retailer in advance of any inability to make full and timely delivery of any order.

Vibratex is not responsible for any lost sales or revenues resulting from a delay in filling any order.

Vibratex reserves the right to cancel orders that do not meet requirements.

Vibratex reserves the right to refuse or cancel any order deemed questionable or of significant risk to Vibratex regardless of payment method and price confirmation.

### **Shipping**

Unless otherwise specified by Retailer and agreed to by Vibratex, orders will be shipped via the most cost effective shipping option. Damages, shortages or products lost in shipment must be reported to Vibratex within five (5) days of receipt. Vibratex will assist in tracking, tracing and replacing items lost or damaged in shipment and in filing claims with shipping companies when appropriate.

### **Minimum Advertised Price**

In order to protect the integrity of the Magic Wand® Original product line and its retailer network, the retailer may not advertise the resale price of the product for less than the price set forth below, which excludes shipping and handling charges:

<u>Item #</u>	<u>Description</u>	<u>Minimum Advertised Price</u>
HV-260	Magic Wand® Original Massager	\$54.95 US

Retailer may not directly or indirectly discount said advertised prices in any manner whatsoever, including but not limited to providing free products or accessories to its customers, providing promotional coupons/give-aways/sales, or by discounting the otherwise standard shipping cost it charges to its customers.

Should Retailer fail to comply with this minimum advertised resale price provision, Vibratex shall have the right to **immediately terminate** Retailer's right to purchase products from Vibratex under this Agreement. This applies to designated url web-sites, as well as 'storefronts' under blanket sites (EBay, Amazon, etc.)

### **Restricted Sales Outside of North America**

Magic Wand® Original massagers are designed for 110/120V electrical supply in North America, which is different than other countries such as Europe and Asia. Given this condition, there may be some risks using converters, which are commonly used to operate the Magic Wand® Original outside of North America.

Vibratex, Inc. will take a zero tolerance position on international sales activities outside of North America. That is, if it is determined that your company, or an agent of your company, is exporting Magic Wand® Original outside of the North American region, you will be restricted from purchasing the unit from Vibratex. In addition, your company may be held solely responsible in the results of any claim associated with the use of the Magic Wand® Original with an electrical converter.

### **Warranty/ Return Policy**

All Magic Wand® Original massagers carry a one year warranty which covers defects in workmanship or materials in the mechanical and electrical parts. Detailed warranty information and instructions are provided with each product distributed by Vibratex. Dismantling or modification of the Wand in any way invalidates this warranty. Product sold outside North America also invalidates the 1 year product warranty term.

### **Termination of Agreement**

Except as otherwise provided herein, either party may terminate this agreement at any time without cause by giving the other party five (5) days written notice of termination.

In the event of termination, this Agreement shall remain applicable to any purchase order made by Retailer and accepted by Vibratex prior to the date of notice of termination was given.

Upon termination of this agreement for any reason, all monies owed by Retailer to Vibratex shall be due and payable immediately.

### **Arbitration of Disputes**

Any claim or controversy arising out of this Agreement and Addendum or a breach thereof shall be settled by binding arbitration which will be conducted by either the American Arbitration Association or "JAMS/Endispute" in accordance with the commercial arbitration rules of those respective organizations. Judgment upon any award may be entered in any court having jurisdiction. Any such claims shall be arbitrated in California, in either San Francisco, Contra Costa or Napa County.

### **Entire Agreement**

This instrument constitutes the entire Agreement between the parties with regard to the sale of the Magic Wand® Original product discussed above. Except as provided herein, this Agreement can only be modified in writing signed by both Vibratex and Retailer.

### **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Retailer Acknowledgement**

By signing below, I acknowledge and agree to the stipulations indicated in this Retailer Agreement. I further agree that my account will have no recourse, legally or otherwise, against Hitachi Living Systems, Ltd. or Vibratex Inc. upon account termination, and all moneys owed and outstanding balances will become due and payable immediately.

I have the authority to sign this document and execute this Retailer Agreement on behalf of my company and related agents of my company. I have read the document and by voluntarily signing below, agree to all terms and conditions herein. I further understand that any false and/ or misleading information could result in the irrevocable termination of my account with Vibratex, Inc.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Parent Company: \_\_\_\_\_

Website(s): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signature of Vibratex, Inc. Officer: \_\_\_\_\_

Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_