

CONSIGNMENT AGREEMENT

THIS CONSIGNMENT AGREEMENT (“**Agreement**”) is made as of this _____ day of _____, 200__, by and between **FRED MEYER JEWELERS, INC.**, a California corporation (“**Fred Meyer**”), with its principal offices at 3800 SE 22nd Avenue, Portland, OR 97202 and _____ (“**Consignor**”), with its principal offices at _____.

RECITALS

- A. Fred Meyer utilizes jewelry inventory in its operations; and
- B. Consignor is willing to consign jewelry inventory to Fred Meyer for sale or return by Fred Meyer on the terms and conditions set forth in this Agreement.

AGREEMENT

1. **CONSIGNED MERCHANDISE.** Consignor will from time to time deliver to Fred Meyer on consignment such amounts of finished jewelry as Fred Meyer shall require for sale as may be mutually agreed upon (the “**Consigned Merchandise**”) upon the terms set forth herein. Fred Meyer agrees to pay all freight and/or other shipping charges associated with the shipment of the Consigned Merchandise except that Consignor shall pay all freight and/or shipping charges for Consigned Merchandise designated as sample merchandise on **Exhibit A**, as supplemented and modified from time to time.
2. **SALE OF CONSIGNED MERCHANDISE.** The Consigned Merchandise will be held for sale by Fred Meyer to customers in the stores it operates.
3. **TITLE TO CONSIGNED MERCHANDISE.** Title to the Consigned Merchandise delivered to Fred Meyer shall at all times remain in Consignor until paid for by Fred Meyer’s customers, at which time title shall pass to the customer. Fred Meyer may sell the Consigned Merchandise in the ordinary course of its business.
4. **RISK OF LOSS.** Fred Meyer shall insure the Consigned Merchandise for its full value for and against all risk of loss. Fred Meyer accepts all risks of loss of the Consigned Merchandise from the time shipped by Consignor until the date it is sold or returned to and received by Consignor; provided, however, that Consignor strictly follows the shipping instructions outlined in **Exhibit B**. Fred Meyer warrants that it will promptly pursue all remedies and payments in the event of a loss and will immediately notify Consignor of any loss. Notwithstanding anything to the contrary in this **Section 4**, risk of loss for all sample Consigned Merchandise shall stay with Consignor until the sample Consigned Merchandise is received by Fred Meyer.

5. **TRANSFER OF TITLE; INDEMNITY.**

5.1 Consignor represents and warrants that Fred Meyer's customers will receive good title to the Consigned Merchandise purchased by them, free and clear of all liens, claims, and encumbrances.

5.2 Consignor hereby agrees to indemnify, and to defend Fred Meyer and its parent, affiliates, employees, officers, directors, agents, predecessors, successors, assigns and stores in which the Consigned Merchandise is displayed, harmless from and against any and all claims, suits, liability, loss, judgments and expenses (including reasonable attorneys' fees) that Fred Meyer may suffer or be or become obligated to pay to third parties arising out of (i) the infringement of any patent, trademark, copyright or other proprietary rights of third parties by Consignor in the manufacture, use or sale of the Consigned Merchandise; (ii) any false or misleading labeling or other deceptive advertising practices alleged by third parties to have been employed by Consignor in connection with the Consigned Merchandise; or (iii) the quality of the materials or workmanship utilized in the manufacture of the Consigned Merchandise being other than as represented by Consignor.

5.3 This **Section 5** is intended solely to allocate potential liability between the parties hereto and is not to be construed as any indication of any obligation or liability of Consignor to any party other than Fred Meyer.

6. **INSPECTION BY CONSIGNOR.** Provided there is no default hereunder, Fred Meyer shall no more often than twice in each twelve (12) month period, permit Consignor and the representatives of Consignor, at Consignor's expense, at reasonable hours and upon reasonable notice, to inspect and inventory the Consigned Merchandise and Fred Meyer's books and records relating to the Consigned Merchandise and to make abstracts or reproductions of such books and records.

7. **FRED MEYER WARRANTIES.** Fred Meyer warrants to Consignor that it will not permit any security interest or other lien or encumbrance to attach to the Consigned Merchandise at any time

8. **TRUE CONSIGNMENT; SECURITY INTEREST.** The parties hereto agree that this Agreement creates a true consignment and that all transactions hereunder shall constitute true consignments of the Consigned Merchandise and not the purchase and sale of merchandise by Fred Meyer. Fred Meyer hereby grants to Consignor a continuing security interest in the Consigned Merchandise delivered to Fred Meyer, including the proceeds of the Consigned Merchandise. Fred Meyer shall sign and deliver to Consignor such financing statements (UCC-1's) and other documents or instruments for filing in all appropriate locations as Consignor shall reasonably request to perfect its security interest as consignor of the Consigned Merchandise in accordance with the provisions of the Uniform Commercial Code.

9. **PROCEDURES.**

9.1 Fred Meyer shall prepare a Memo Purchase Order (“**MPO**”) and issue a Memo Purchase Order number when ordering Consigned Merchandise from Consignor.

9.2 Fred Meyer shall confirm the SKU number and amount of each item of Consigned Merchandise received pursuant to the MPO.

9.3 Fred Meyer will replenish and pay for active Consigned Merchandise sold through the issuance of an asset purchase order and subsequent payment. Fred Meyer shall issue a Memo Payment Authorization (“**MPA**”) on any Consigned Merchandise that are on sell-down, indicating the quantity, by SKU number of Consigned Merchandise sold by Fred Meyer. The MPA shall be issued monthly and no later than fifteen (15) days after the end of the previous month’s sales, exclusive of any other prior written arrangement. Fred Meyer reserves the right to maintain a 1% reserve on MPAs to cover any returns at store level. The 1% reserve will be paid to the Consignor within one hundred twenty (120) days after the date set for termination.

9.4 Upon receipt of the MPA, Consignor shall promptly prepare an invoice, setting forth payment due from Fred Meyer and itemized to match the MPA or which shall be accompanied by a statement as to any differences. Fred Meyer shall remit payment to Consignor in the amount of such invoice which shall be paid pursuant to customary Fred Meyer terms.

9.5 The prices to be charged by Consignor and to be paid by Fred Meyer for the Consigned Merchandise shall be set forth in Consignor’s price list as set forth in the attached **Exhibit A**. The selection of Consignor’s Consigned Merchandise available at Fred Meyer Jewelry stores may be modified from time to time upon mutual agreement of the parties. Such agreement shall be documented by supplemental **Exhibit A** documents communicated by Consignor to Fred Meyer and dated as to the start of the effective date of the **Exhibit A**. Should Consignor and Fred Meyer agree to purchase Consigned Merchandise, the price to be charged by Consignor and paid by Fred Meyer shall be no higher than consignment unit cost as set forth in attached **Exhibit A**, as supplemented and modified. Should Consignor and Fred Meyer agree to return Consigned Merchandise, return will be made at consignment unit cost set forth in **Exhibit A**. Any difference between such cost and cost Fred Meyer shows open on its accounting system shall be reimbursed by Consignor to Fred Meyer.

10. **TERMINATION.**

10.1 This Agreement may be terminated by either party upon sixty (60) days written notice to the other. The final accounting and payment between the parties shall be made no later than one hundred twenty (120) days after the termination date. Upon the receipt of such notice, Consignor shall have no further duty to ship or deliver goods to Fred Meyer.

10.2 Upon the expiration of the sixty (60) day notice period in **Section 10.1**, this Agreement shall terminate and Fred Meyer shall have the right to purchase such items of the Consigned Merchandise as it may desire by sending to Consignor via certified mail, a statement of its desire to do so, which statement shall be deemed a Sales Report and which shall list those piece(s) of Consigned Merchandise that Fred Meyer shall purchase and which shall be accompanied by payment therefore. Fred Meyer shall return to Consignor, at Fred Meyer's expense and risk, all Consigned Merchandise not so purchased; which risk shall terminate upon Consignor's receipt of the Consigned Merchandise.

11. **DEFAULT.** The event or occurrence of any one or more of the following shall be an event of default:

11.1 Default in the payment or performance of any of a party's obligations or agreements hereunder which continues for more than thirty (30) days after written notice thereof; or

11.2 Any representation or warranty made herein or in any certificate, statement or agreement furnished in connection with this Agreement should prove to be false or misleading in any material respect; or

11.3 Either party shall (i) make an assignment for the benefit of creditors; or (ii) file or suffer the filing of any voluntary or involuntary petition under any chapter of the United States Bankruptcy Code; or (iii) apply for or permit the appointment of a receiver, trustee or custodian of any of its property or business; or (iv) make an admission of its inability to pay its debts as they become due; or

11.4 An attachment on any of the Consigned Merchandise delivered hereunder shall occur and continue for thirty (30) days after written notice thereof.

Then at the option of the non-defaulting party, this Agreement may terminate, and (i) Fred Meyer shall promptly return to Consignor all Consigned Merchandise not heretofore purchased; or (ii) Fred Meyer shall purchase such items of Consigned Merchandise as it may desire by sending to Consignor, payment for those items it desires to purchase at the price indicated on the MPA and returning the balance of the Consigned Merchandise to the Consignor.

12. **NOTICES.** All notices, demands, reports or invoices given under this Agreement shall be addressed and sent:

TO CONSIGNOR:

Fax Number:

TO FRED MEYER:

Fred Meyer Jewelers, Inc.
Attn: Kirsten Darrow
3800 SE 22nd Avenue, Suite 23J
Portland, OR 97202
Fax Number: 503-797-7616

Unless otherwise stated herein to the contrary, all notices and demands hereunder shall be given by certified mail, overnight courier or by facsimile and all reports and invoices by regular mail or facsimile. Each notice or demand shall be deemed to have been given upon receipt.

13. **General Provisions.**

13.1 Fred Meyer is committed to sourcing its products through vendors that purchase products from environmentally and socially responsible sources. Consignor agrees to source metals and gemstones from mines that respect the rights of workers and use mining practices that are not environmentally harmful. This standard includes but is not limited to the Kimberley process for the mining of diamonds, and for metals such as gold, the industry standards that are developed from time to time.

13.2 This Agreement sets forth the parties final and entire understanding with respect to its subject matter. This Agreement cannot be changed, waived or terminated except in writing signed by the parties hereto, and shall be governed by and construed under the laws of the State of Oregon (without reference to its rules as to conflicts of law).

13.3 Should any claim or dispute arise in connection with this Agreement, then the adjudication of such claim or dispute shall be brought before a court of competent jurisdiction in Portland, Oregon.

13.4 If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision of this Agreement and this Agreement shall be construed as if such provision were drafted so as not to be invalid or unenforceable.

13.5 This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, and any such attempted assignment shall be void; provided, however, that a party may assign all of its rights and delegate all of its obligations under this Agreement, without consent of the other party, to

any corporation or other entity owned directly or indirectly by such party or any subsidiary or affiliate of such party.

13.6 This Agreement may be executed in two or more counterparts and by facsimile signature and each counterpart shall be deemed an original and all such counterparts shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CONSIGNOR:

FRED MEYER:

FRED MEYER JEWELERS, INC.

By: _____

By: Kirsten Darrow

Its: _____

Its: GVP Merchandising, Marketing & Ecommerce

By: _____

By: Michele Fletcher

Its: _____

Its: Jewelry Controller

EXHIBIT A

EXHIBIT B

TRAFFIC DEPARTMENT
FRED MEYER / LITTMAN JEWELERS
3800 SE 22ND AVE.
PORTLAND, OR 97202

Traffic Manager: Ann Swain

Attention: This document consists of shipping guidelines listed below:

- Document Purpose**
- Watch and Boxed Shipments**
- All Other Shipments**
- Addressing Your Shipments**
- Packaging Your Shipments**
- Use of Fred Meyer Account numbers**
- Insurance**
- Filing a Claim**
- Freight Charge Backs**
- Freight Re-bills**
- Saturday Delivery**
- Automated Shipping**
- Automated Packing List**
- E-Mail Notification**
- Hazardous Material**

Document Purpose This document provides shipping guidelines to be followed by all Vendors that move product for Fred Meyer/Littman Jewelers.

Shipments for Watch and Boxed Goods

Shipments containing a pallet or more of boxed goods (watches, boxed set, etc.):

- All vendors **MUST** use FedEx Freight LTL services.
- Do not include description of contents unless forced to do so. If forced to include a description, use "**Horological Instruments**".
- Prior notification must be received via email for all palletized shipments. Email to: FMJtrafficdepartment@fredmeyer.com
- Provide purchase order number(s) and quantity in each shipment.
- Once all proper information is provided, the Traffic Department will send Third-party account information for FedEx Freight.

Shipments that do not consist of a pallet:

- Ship merchandise FedEx 2nd Day to retail stores and Distribution Center.
- Use code names (see below).
- Do not include your company name on the bill of lading, shipping label or shipping box.
- Use initials that do not contain the letter "J."

NOTE: Failure to comply with the instructions listed above will result in loss of coverage while goods are in transit.

Shipment of displays or printed materials:

- You may choose the shipment method as you are responsible for covering the freight charges.
- Please notify the Fred Meyer Traffic Department for reference field information.
- We will gladly ship buyer required catalogs to our stores for you.
- Make sure all catalogs are addressed to:
 (Buyer Name)
 Attn: F.M. 102.05 Dept. XYZ.
 3800 SE 22nd Ave.
 Portland, OR 97202.

All Other Vendors Addressing Your Shipments:

- Addressing your shipments accurately will ensure everything you ship will arrive on time and help deter tampering or losses.

Always ensure that:

- The “**From**” address on the box does not indicate jewelry is in the shipment.
- Do not use the word “Jewelry” or the initial “J” on labels or boxes
- Do not use your company name. Use the vendor initials Fred Meyer assigned to your company and include your phone number. If there is a loss and your company name is anywhere on the box or air bill, you will not get paid for the invoice.

Listed below are the Fred Meyer required name codes to use for stores and main office:

If store is....	Than use name code...	Example...
Fred Meyer store 005 100.05 Dept: XYZ	F.M. and the store radio number (Dept: XYZ)	F.M
Littman store 934	Littco and the store number	Littco 00934
Main Office store 205 Dept: XYZ	F.M. and location number plus (Dept: XYZ)	F.M. 102.05

Note: When shipping multiple boxes for one invoice, always number the boxes as shown below:

1 of 3 2 of 3 3 of 3

Ensure the shipping invoice is always enclosed in the box labeled 1.

Note: Fred Meyer will only be responsible for payment on invoices for box(s) addressed in compliance with the stated guidelines. Failure to comply with these guidelines will result in loss of payment if a box is lost or tampered with.

Packaging Your Shipments

Preparing your shipments correctly will ensure shipments will arrive intact.

Always:

- Double layer merchandise for protection when shipping with a FedEx manufactured box.
- When shipping with any other box, tape with 2" wide, pressure-sensitive, *plastic brown tape or brown gum tape*.
- Put the **tracking number on all invoices** inside the box before you seal the box.
- Never ship more than \$50,000.00 cost value in one box with FedEx!**

Use of Fred Meyer Account Numbers

When shipping to our stores or main office, Fred Meyer has specific account numbers based on the cost value of the merchandise. The table below lists the cost values, account numbers and shipping service to be used.

If cost value is...	Use FedEx Account Number...	Shipping Service
Vendor Samples	Do Not Bill FM	Vendor responsible
\$1000.00 or less	17369028-2	FedEx 2 nd day
\$1001.00 up to \$500,000.00	17369028-2	\$50,000 per box max FedEx Standard Overnight
Over \$500,000.00 but no more than \$750,000.00 per truck.	0995015503	Brinks
<i>(Do not ship Priority Overnight to our Main Office. If you do we will charge back the total to you.)</i>		
Shipments of boxed goods When shipping boxed goods (jewelry inside a jewelry box) ship FedEx 2 nd day regardless of value.		

IF shipments are going to our main office: Bill recipient with the account number(s) above.

IF the shipments are going to our stores: Bill 3rd party, with the account number(s) above.

Insurance

Fred Meyer Jewelers carries corporate insurance and does not require your company to insure. **Never declare value on shipments** as you will be charged back the FedEx fee for the declared value charges and/or a flat fee of \$100.00

Hazardous Material

Label hazardous substances in compliance with the Federal Hazardous Substance Labeling Act and transportation method; I.D.T.A., DOT CRF-49, I.M.D.G. or as may apply. Vendor must show proof they are DOT trained and certified. Vendor is responsible for freight and handling of hazardous goods. Vendor could incur fines up from \$250 to \$1,750 for any violations on this subject matter.

Filing a Claim A claim and supporting documentation is required to be filed immediately. If you have any questions please contact Fred Meyer Loss Prevention at 503-797-5134.

Freight Charge Backs

Sometimes shipping issues occur that require freight charges to be billed back to the vendor.

Listed below are the reasons:

- Vendor declares a value or insures with FedEx.**
- Vendor ships using Brinks and declares a value under \$500,000.00 or over \$750,000.00.**
- Vendor consistently ships using FedEx services not in Fred Meyer specified cost value guidelines**
- Vendor ships Priority Overnight to our Main Office (*Standard Overnight gets to us by 10:30 and costs less*)**
- Vendor will be charged \$100 per incident of non-compliance.**

Freight Re-bills

The following guidelines define when Fred Meyer **will not re-bill** the freight.

- Vendor bills themselves
- Shipper elected the insurance coverage option offered by the carrier.

Saturday Delivery

Currently Fred Meyer Jewelers does not staff the Main Office for receiving merchandise on Saturday. **Do not ship to our Main Office for Saturday delivery as it results in additional costs.**

Avoid shipping stores for Saturday delivery. If a store needs something by the weekend, ship 2nd day no later than Wednesday. On Thursdays, ship Standard Overnight. **Do not ship overnight on Friday for a Monday delivery! Merchandise sitting in a terminal for any length is vulnerable to loss.**

Automated Shipping Fred Meyer will require all vendors to ship using an ***automated FedEx shipping system.***

One inexpensive method is **FedEx.com**. All that is needed is connectivity to an internet provider and an account with FedEx.

Automated Packing List

We require all vendors using the FedEx system enter the invoice number(s) in the field labeled "**Ref.**" Fred Meyer uses this document as a packing list which identifies merchandise in the box. If there are multiple invoices in the box, use a space between the invoice numbers to separate each invoice. If you cannot fit the entire invoice numbers in the "**Ref**" field allotted, use the 2nd & 3rd "**Ref**" field.

E-Mail Notification Both inbound and outbound shipments can be requested on the FedEx shipping system when creating a label.

Fred Meyer Jewelers Routing Instruction Guide Agreement

Vendor Business Name: _____

Vendor Shipping and Receiving Contact Information

Contact Name: _____

Title: _____

Phone: _____ Fax _____

Email: _____

Product /Services Shipping and Receiving Information

Address: (Street/Suite) _____

City/ST/Zip: _____

Contact Name: _____

Title: _____

Phone: _____ Fax: _____

Email: _____

Vendor has read and agrees to comply with Routing Instructions

Signed by (Print Name): _____

Signature: _____

Title: _____

Date Signed: _____

**PLEASE RETURN THIS COMPLETED SIGNATURE PAGE TO FRED MEYER
TRAFFIC DEPARTMENT: RETAIN A COPY FOR YOUR RECORDS.**

Email: FMJtrafficdepartment@fredmeyer.com

Fax: 503.797.3860

Mailing Address: Traffic Department
04002 / 23J
3800 SE 22nd Ave
Portland, OR. 97202

If there are any questions or concerns regarding your business and the Routing Instructions, please contact **Ann Swain (Assistant Director of Distribution)** at ann.swain@fredmeyer.com .

Vendor Freight Responsibility Form (optional)

If you so choose, you may supply Fred Meyer Jewelers with your preferred freight carrier name and the coordinating account number.

This would cover any Vendor shipping responsibility – such as (return of samples)

Preferred Freight Carrier: _____

Account #: _____

Signed by (Print Name): _____

Signature: _____

Title: _____

Date Signed:

PLEASE RETURN THIS COMPLETED SIGNATURE PAGE TO FRED MEYER TRAFFIC DEPARTMENT: RETAIN A COPY FOR YOUR RECORDS.

Email: FMJtrafficdepartment@fredmeyer.com

Fax: 503.797.3860

Mailing Address: Traffic Department
04002 / 23J
3800 SE 22nd Ave
Portland, OR. 97202

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