



NON-MANUFACTURED GOODS TERMS AND CONDITIONS

These Non-Manufactured Goods Terms and Conditions (the “**NM Goods Terms**”) form part of the Agreement, if Customer elects to enable the purchase of Gift Cards (as defined herein) for its Authorized Users on the SaaS Products. These NM Goods Terms set forth the terms and conditions under which Terryberry will provide non-manufactured goods, either through a third party, or directly from a Terryberry warehouse (collectively, “**NM Goods**”) to Customer, each party’s responsibilities hereunder, and the fees related thereto. If there is a conflict between the terms of these NM Goods Terms and the Agreement, these NM Goods Terms shall govern with respect to the NM Goods products described herein. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

1. PRICING AND PAYMENT OF FEES.

- 1.1. **Prices and Included Goods.** The price charged for an NM Good will be listed in the order confirmation email. Prices shown do not include taxes or charges for shipping and handling or processing. All applicable taxes and charges, including any applicable processing fees, will be added to merchandise total and will be itemized in Customer’s invoice.

2. SHIPMENTS AND RETURNS

- 2.1. **Shipments; Delivery; Title and Risk of Loss.** Terryberry will arrange for shipment of the NM Goods to Customer. Customer will pay all shipping and handling charges specified during the ordering process including drop ship fees to residential addresses and any brokerage, duties and miscellaneous fees incurred title and risk of loss pass to Customer upon transfer of the NM Goods to the carrier/delivery. Shipping and delivery dates are estimates only and cannot be guaranteed. Terryberry is not liable for any delays in shipments.
- 2.2. **Returns - Non-Customized NM Goods.** Returns for any reasons unrelated to damaged/defects are not accepted, unless otherwise permitted by Applicable Law. If a product is damaged/defective a claim can be filed for a replacement within 7 days (unless otherwise stated) of item delivery. To file a claim, Customer must email our Customer Service Department at customercare@terryberry.com to obtain a Return Merchandise Authorization (“**RMA**”) number before shipping NM Goods. No returns of any type will be accepted without an RMA number. If product becomes defective after 7 days of item delivery the Customer will work with the Third Party NM Good Provider to file a warranty claim.
- 2.3. **Returns - Customized NM Goods.** Customer may return any NM Goods to Terryberry that do not comply with the applicable NM Goods warranties provided by the Third Party NM Good Provider. Such returns shall be free-of-charge and shall be replaced, refunded, or credited as described below. Non-defective NM Goods which have been monogrammed, personalized or customized may not be returned. Items that have been damaged due to wear & tear beyond a reasonable amount will not be covered by this guarantee and any subsequent repairs or replacements will be charged to the Customer.

3. CUSTOMER ACKNOWLEDGEMENT

- 3.1. Customer acknowledges and agrees that:

- 3.1.1. Customer and its Authorized Users are solely responsible for ensuring that any and all information required by Terryberry to perform the NM Goods, including, without limitation, user IDs, passwords, shipping information, and other information (collectively “**NM Good Informations**”), is accurate and up-to-date.
- 3.1.2. Customer has all necessary rights, consents and permissions to provide the NM Goods Information to Terryberry for the purpose of providing the NM Goods, and Customer’s provision of the NM Goods Information.
- 3.1.3. In the event Customer wishes to add, modify or remove the types of NM Goods that Customer’s Authorized Users may elect to purchase, Customer shall follow all instruction that Terryberry provides and make available all applicable information that Terryberry informs Customer that Terryberry requires in respect of such addition, modification or removal.

4. PROVISION OF NM GOODS.

- 4.1. **No Warranties.** Except where prohibited by Applicable Law, NM Goods are provided to Customer and its Authorized Users on an “as is” and “as available” basis. Terryberry does not provide any warranty with respect to and specifically disclaim any warranties and conditions with respect to the operation of the NM Goods or any particular application or use thereof, whether express, implied, statutory, or otherwise, including without limitation, the implied warranties and conditions of merchantability, fitness for a particular purpose, workmanlike service, and non-infringement and any warranties that may arise from a course of dealing, course of performance or trade practice.
- 4.2. **Liability.**
 - 4.2.1. **No Indirect Damages.** In addition to and notwithstanding anything else to the contrary in the Agreement, Terryberry will not be liable to Customer for any claims, losses, costs, exemplary, punitive, special, incidental, direct, indirect or consequential damages, lost profits, lost revenues, lost business opportunities, loss of goodwill or expenses caused by failure, termination, suspension, delay or disruption of the NM Goods, the Internet, or any communications network, facility or equipment related thereto.
 - 4.2.2. **Limitation on Liability.** Without limiting the foregoing, Terryberry’s total liability to Customer and/or its Authorized Users in respect of the NM Goods shall in no event exceed the limitation of liability set forth in the Agreement.
 - 4.2.3. **No Liability for Loss or Theft.**

- a. In addition to the disclaimers, limits on liability and indemnification obligations applicable to Customer and its Authorized Users' set forth in the Agreement, Customer waives and releases Terryberry, its officers, directors, employees, agents, and assigns from any liabilities, damages and costs arising from or related to (i) Customer or its Authorized Users' loss or the theft of any NM Goods; and (ii) any act or omission of an NM Good Provider in connection with any NM Good it provides.

4.3. Indemnification. Customer agree to indemnify Terryberry and its respective affiliates, officers, directors, employees, agents, successors and permitted assigns from and against any and all claims, damages, losses, liabilities, costs, interest, expenses (including taxes), fines, penalties, assessments, fees (including reasonable legal fees, professional fees and related costs) which are directly or indirectly, or in any way or in any manner whatsoever, the result of, caused by, or arise from Customer's use of the NM Goods, including against all claims made against Terryberry by a user of an NM Good or a NM Good Provider that arise or are alleged to arise from any Third Party Gift Card transactions in which Customer or its Authorized Users are involved.

4.4. Compliance with Laws. The NM Goods are made available to Customer and its Authorized Users solely for lawful purposes and uses. Customer will comply with, and will ensure that Customer's Authorized Users comply with, all Applicable Laws.

5. DEFINITIONS

5.1. "Third Party NM Goods" means any NM Goods provided by an NM Good Provider.

5.2. "NM Good Provider" means a person or entity, other than Terryberry or its affiliates, that provides any NM Goods to Customer or its Authorized Users on behalf of Terryberry.

6. CUSTOM AWARDS

6.1. Customer-Procured Items. Should Customer provide a third party item procured by Customer that is made available to Customer's Authorized Users via Terryberry's Services ("**Customer Procured Item**"), a processing fee will apply to each Customer Procured Item ordered by Customer's Authorized Users.