



## TERMS AND CONDITIONS

Retailer hereby agrees to the following terms and conditions:

Retailer agrees to MDB's Minimum Advertised Price (MAP) Policy (to the extent allowed by applicable laws), as may be modified from time to time. Retailer may offer for sale on Retailer's website the goods purchased from MDB. Any sale or attempted sale, or offers to sell on third party websites including, but not limited to, "craigslist.org" or "ebay.com" is strictly prohibited.

All goods bearing the trademark(s) of the MDB family of brands, which are again, Franklin & Ben, Million Dollar Baby, DaVinci Baby, babyletto, and nurseryworks shall be marketed in accordance with the marketing strategies provided by MDB to Retailer from time to time, including the use of specific pictures and product descriptions. Retailer acknowledges that any trademarks of any of the brands are the sole rights of MDB and Retailer shall acquire no rights whatsoever to any such marks. If Retailer supplies, or authorizes the use of, any private label to be used on the merchandise, Retailer represents and warrants to MDB that Retailer is the sole and exclusive owner of all rights in and to the private label, and that the use of such private label on the merchandise will not infringe upon or otherwise violate the rights of any person or entity. Retailer agrees to protect, defend, indemnify, and hold MDB harmless from and against any and all liabilities, damages, judgments, penalties, losses, costs, expenses (including without limitation reasonable attorneys' fees and costs), claims, suits, or demands, suffered by MDB or brought by any third parties for infringement of trademark rights of any third parties arising out of the private label. This indemnity shall survive the termination of this Agreement and the completion of the sale transaction.

Our goal is to ship within 24 hours of receiving your order. Freight terms are F.O.B., our warehouse. If Retailer uses a third party shipping account such as Federal Express or UPS, Retailer agrees to provide MDB Retailer's prepaid account information. We are not responsible for any charges billed by these third parties. MDB will not be liable for any delay caused by circumstances outside of MDB's control, including but not limited to, acts of God, perils of the air, land, and sea, weather conditions, mechanical failures, acts of public enemies, war, strikes, civil commotions, or acts or omissions of public authorities, such as customs and health officials who have actual or apparent authority.

Retailer agrees to examine goods immediately upon receipt, each of Million Dollar Baby's statements, and to advise MDB of any disputed transactions or statements within 10 days of receipt, together with a written statement specifying reasons for such dispute. Failure to timely notify MDB of any dispute with respect to defective goods or billing shall constitute a waiver of all such disputes. The freight carrier is responsible for all shipping damages. Freight claims will be the responsibility of the consignee. MDB can assist you in filing a freight claim, but cannot do so on your behalf. All returns must include a Return Merchandise Authorization Number (RMA#). No returns, of any type, will be accepted without a RMA number. Please provide the following information



when calling for a RMA number: customer name, invoice number, serial number and the nature of the problem. All products to be returned must be sent within 30 days from the date of shipment, 100% complete, in BRAND NEW condition, and must include original packing material, manuals, blank warranty cards and all accessories provided by the manufacturer. If however, a package is returned missing any of the manufacturers supplied accessories or there is obvious damage or visible wear and tear to the unit, MDB reserves the right to refuse the return, or a restocking fee of up to 20% may be applied. Labor, service fees, insurance, shipping and handling charges are non-refundable. Unauthorized deductions are prohibited. Account will be placed on hold until deduction is paid or an authorized credit memo is issued against the deduction. MDB's Account Specialist must be contacted for approval and issuance of credit memo. Credit memo numbers should be noted on your check remittance payment.

MDB will not be liable for any damages, whether direct, special, incidental, or consequential, including but not limited to loss of profits or income, whether or not MDB had knowledge that such damages might be incurred. MDB will not be liable for Retailer's acts or omissions.

The merchandise sold under this Agreement is warranted to be free from defects in workmanship and materials for one year. Warranty does not cover abuse, misuse, improper maintenance, accidents, alterations, cosmetic defects, scratches, products which have their serial number removed or made illegible, or products rented to others. Warranty is void if any alterations, additions, improvements or attachments to the product(s) are made which are not previously authorized in writing by MDB. Warranty policy is not extended beyond the original customer. Other than as expressly stated herein, MDB DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Retailer acknowledges that, if as a result of doing business with MDB, Retailer receives information from MDB that would be considered confidential information and secrets of trade, Retailer agrees to keep such information confidential and not disclose to any third party or make any use of such confidential information except as required in the course of Retailer's business dealings with MDB.

Any claim, dispute, and/or controversy between the parties relating to this Agreement shall be submitted to and determined exclusively by binding arbitration. The arbitration proceeding shall be conducted in accordance with the rules of the American Arbitration Association ("AAA"). Any arbitration between the parties shall be conducted by a neutral Arbitrator in the County of Los Angeles, California. Retailer waives its venue rights without reference to conflicts of laws principles. The Arbitrator shall be selected pursuant to the rules of the AAA. The cost of the arbitration shall be shared equally between the parties. This paragraph shall survive the termination of this Agreement and apply to any claim whether arises or is asserted during or after such termination. The parties agree that this paragraph does not cover claims by either party to obtain equitable, injunctive or other relief from a Court or agency of competent jurisdiction. If any legal action is necessary to enforce the terms of this Agreement in a court of law, the prevailing party shall be entitled to



reasonable attorneys' fees and costs. If any provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, then such provision or provisions shall be severed from the remaining provisions of this Agreement, and the validity and enforceability of the remaining provisions, or portions of them, shall not be affected.

These Terms and Conditions and the MAP Policy set forth the entire Agreement and understanding between MDB and Retailer as to the subject matter hereof, and merge and supersede any and all prior discussions, agreements and understandings of every kind and nature. In the event of any conflict between the terms and conditions stated on Retailer's purchase order and this Agreement or any terms and conditions on MDB's invoice, Retailer agrees that the provisions of this Agreement and MDB's invoice shall control. This Agreement shall not be changed, modified or amended except in writing and signed by all parties hereto.

This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assign.



## MAP Policy

MDB has established the Minimum Advertised Price (MAP) Policy set forth below to build and maintain integrity for our brand. MAP Policy emphasizes the value and quality of our products through advertising and marketing.

### **MAP Policy Guidelines:**

- MAP Policy applies to all authorized retailers of MDB products.
- If a MAP price is established, all advertised prices must be at or above MAP. However, not all products will have a MAP price. If a product does not have a MAP price, a retailer may advertise the product at any price determined by the retailer.
- Retailers are not required to list prices in advertising. However, if a price is listed, it must be at or above MAP. Statements such as "call for price" or "call for quote" are acceptable.
- Retailers are responsible for ensuring their pricing is at or above MAP on Internet search engines.
- MAP Policy applies to all advertising placements including, but not limited to: (i) print ads (inserts, magazines, newspapers, catalogs, and mail order catalogs); (ii) broadcast (radio and TV, direct mail, faxes, and Internet placement with third parties (banner ads, broadcast emails, destination pages, and third-party sites)); (iv) Internet placements on retailers' websites; and (iv) flyers, posters and coupons.
- MDB reserves the right to reset MAP prices upon notice on a periodic basis for reasons that include, but are not limited to, its business judgment.

### **Price Mark-Outs:**

- Retailers are permitted to advertise MDB products with price "mark-outs" or "mark-throughs," provided the advertised price is at or above the MAP price.

### **Pricing Statements:**

- MAP Policy allows retailers to omit pricing from advertisements and advertisement statements such as "call for price" or "call for quote".

### **Free Offers Associated with Million Dollar Baby Products:**

- MAP Policy is not violated if a retailer offers free shipping or handling, 0% sales tax, and/or or free financing promotions.



**Price Matching Policies:**

- Price matching policies are acceptable. However, they cannot be used as an excuse for violating MAP Policy. Advertised prices must always be at or above MAP.

**Failure to Comply with MAP Policy:**

- We are confident that all of our retailers appreciate how MAP Policy builds the MDB brand for the benefit of all. Accordingly, we do not anticipate any violations. However, in the sole discretion of MDB (and subject to applicable laws), failure to abide by MAP Policy may result in a retailer's loss of authorization status and the ability to participate in marketing programs, access and funding, including but not limited to:

- Advertising or marketing reimbursements;
- Retailer representative sales incentives and other additional sales contests or promotions;
- Vertical market discounts and incentives (for example, discounts for government, education, religious, and other non-profit institutions);
- Ability to receive special or bid pricing; and
- Other consequences and remedies as may be determined by MDB.