

## NEW Terms of Use

### Introduction

Please read these Terms carefully before using any of our online services (including, without limitation, our website, any online services, software, or mobile apps) provided by Raymour & Flanigan Furniture | Mattresses (“**Company**”, “**we**”, or “**us**” or “**our**”) that post a link to these Terms (the “**Service**”). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms (defined below), to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our Privacy Policy.

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit the Company’s liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

### Additional Terms

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively “Additional Terms”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise.

### Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service as more fully explained here.

### Quick Links

**We have summarized some (but not all) of the main topics of these Terms below. The complete provisions are fully set forth in the links that follow each summary, and those complete provisions, and not the headings or summaries, govern.**

### Grants and Limitations of Rights

- We only grant you a limited revocable license to use the Service subject to rules and limitations. More.

- You grant us a broad license to the content you submit and to your profile. You retain ownership of and responsibility for your content. We have the right to manage our Service to keep its content appropriate. [More.](#)
- Your use of our Service is subject to various restrictions designed to protect the Service and users. [More.](#)

### **Limitations on Your Remedies**

As permitted by applicable law,

- We also disclaim most warranties and provide the Service “As Is”. [More.](#)
- Our liability is greatly limited. [More.](#)

### **Dispute Resolution**

- To the fullest extent permitted by law, you agree to arbitrate (rather than litigate) disputes against us, to waive trial in court, by a jury, and by an administrative agency, and to waive the right to assert claims by way of class or collective actions. [More.](#)

### **Availability of Service**

- We may change or discontinue our Service, or your right to access it, in whole or in part. [More.](#) Our Service is intended for access from and use in the U.S.A. [More.](#)

## **1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.**

### **A. Ownership**

The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by the Company, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of the Company, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. The Company owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

### **B. Your Rights to Use the Service and Content.**

- i. Your right to use the Service and Content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the

Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign or transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the **“Company Licensed Elements”**):

1. Display, view, use, and play the Content on a computer, mobile or other internet enabled or permitted device (**“Device”**) and/or print one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you;
2. Subject to any applicable Additional Terms, if the Service includes a “Send to Friend,” social media sharing or similar tool that allows you to initiate and send to one or more of your contacts a communication that includes content, or to post our content to third-party services or your own site or online service, and the tool is operational, use the tool to do so; provided, however, that you do not do so in any manner that violates applicable law or third-party rights, and only send to recipients you have previously received permission to contact;
3. If the Service includes a “Download” link next to a piece of content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, a trailer, an RSS feed), you may only download a single copy of such content to a single Device;
4. Download, install and use one copy of any software, including apps, that we make available on or through the Service (**“Software”**) on your Device in machine-executable object code form only and make one additional copy for back-up purposes; provided, however, that you understand and agree that (i) by allowing you to download the Software, the Company does not transfer title to the Software to you (i.e., you own the medium on which the Software is recorded, but the Software's owner (which may be the Company and/or its third-party Software licensor) will retain full and complete title to such Software); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Software, except as expressly authorized in these Terms or applicable Additional Terms, without the prior written consent of the Company; (iii) you may not assign, rent, lease, or lend the Software to any person or entity and any attempt by you to sublicense, transfer, or assign the Software will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law;

5. If made available to you, obtain a registered personal account (and/or related username and password) on the Service and interact with the Service in connection therewith;
6. Link to the Service from a website or other online service, so long as: (a) the links only incorporate text, and do not use any Company names, logos, or images, (b) the links and the content on your website do not suggest any affiliation with the Company or cause any other confusion, and (c) the links and the content on your website do not portray the Company or its products or services in a false, misleading, derogatory, or otherwise offensive manner, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party or are otherwise objectionable to the Company. The Company reserves the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third-party; and
7. Use any other functionality expressly provided by the Company on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post User-Generated Content (as defined below) and any applicable Additional Terms.

**C. Rights of Others.**

In using the Service, you must respect the intellectual property and rights of others and the Company. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, see Section 5 below.

**D. Reservation of all Rights Not Granted as to Content and Service.**

These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and Content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY THE COMPANY AND ITS LICENSORS AND OTHER THIRD PARTIES. Any unauthorized use of any Content or the Service for any purpose is prohibited.

**E. Third-Party Services.**

We are not responsible for third parties or their content, advertisement(s), apps or sites. For instance, portions of the Service may be integrated into or linked to third-party sites, platforms and apps that we do not control. Similarly, we may make ads and third-party content or services, which we also may not control, available to you on or via our Service.

This may include the ability to register or sign in to our Services using Facebook Connect or other third-party tools, and to post content on third-party sites and services using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for third-party services. If you are accessing or using the Service through Apple, Android, or any other platform, these are Third-Party Services.

## 2. CONTENT YOU SUBMIT AND COMMUNITY USAGE RULES.

### A. User- Generated Content.

- i. **General.** The Company may now, or in the future, offer users of the Service the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Service, or on or in response to our pages or posts on any third-party platforms or in connection with any of our promotions by any media or manner, or otherwise submit to us (e.g., on our Facebook or other social media pages, in response to our tweets, through a sweepstakes or contest, or by otherwise sending it to us) (collectively, “**submit**”) messages, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding Company Licensed Elements included therein, “**User-Generated Content**” or “**UGC**”). You may submit UGC through your profile, forums, blogs, message boards, social networking environments, content creation and posting tools, gameplay, social communities, contact us tools, email, and other communications functionality. Except to the extent of the rights and license you grant in these Terms and, subject to any applicable Additional Terms, you retain whatever legally cognizable right, title, and interest that you have in your UGC.
- ii. **Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service’s posted Privacy Policy, or any applicable Additional Terms, you agree that (a) your UGC will be treated as non-confidential and non-proprietary by us – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) to the maximum extent not prohibited by applicable law, the Company does not assume any obligation of any kind to you or any third-party with respect to your UGC. Upon request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms. You acknowledge that the Internet and mobile

communications may be insecure and subject to breaches of security; accordingly, you acknowledge and agree that your UGC is submitted at your own risk.

In your communications with the Company, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs for music, websites, apps, books, scripts, screenplays, motion pictures, television shows, theatrical productions, software or otherwise (collectively, **“Unsolicited Ideas and Materials”**). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to us as set forth below. In addition, the Company retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. The Company’s receipt of your Unsolicited Ideas and Materials is not an admission by the Company of their novelty, priority, or originality, and it does not impair the Company’s right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

- iii. License to Company of Your UGC. Except as otherwise described in any applicable Additional Terms (such as a promotion’s official rules), which specifically govern the submission of your UGC, or in our Privacy Policy, you hereby grant the Company, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your UGC (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such UGC and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any UGC for any purposes whatsoever, including developing, producing, marketing, and selling products and/or services for the Company’s pecuniary benefit. You understand that in exercising such rights, metadata, notices, and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary authority to do so. In order to further effect the rights and license that you grant to the Company to your UGC, you also, as permitted by applicable law, hereby grant to the Company, and agree to grant to the Company, the unconditional, perpetual, irrevocable right to use and exploit your name, persona,

and likeness in connection with any UGC, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any UGC, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 2.A(iii).

- iv. Company's Exclusive Right to Manage Our Service.** The Company may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and the Company may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third-party in connection with our operation of UGC venues in an appropriate manner. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms. Such UGC submitted by you or others need not be maintained on the Service by us for any period of time, and you will not have the right, once submitted, to access, archive, maintain, change, remove, or otherwise use such UGC on the Service or elsewhere, except that California minors have certain rights to have certain content about them that they have themselves posted on the Service prospectively removed from public display as provided for in the Privacy Policy.
- v. Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the intellectual property and other rights to the UGC, or you have a lawful right to submit the UGC and grant the Company the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any Company obligation to obtain consent of any third-party and without creating any obligation or liability of the Company; (b) the UGC is accurate; (c) the UGC does not and, as to the Company's permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any third-party; and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.

- vi. **Enforcement.** The Company has no obligation to monitor or enforce your intellectual property rights to your UGC, but you grant us the right to protect and enforce our rights to your UGC, including initiating actions in your name and on your behalf (at the Company's cost and expense, to which you hereby consent and irrevocably appoint the Company as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

**B. Community Usage Rules.**

As a user of the Service, these Community Usage Rules ("**Rules**") are here to help you understand the conduct that is expected of members of the Service's online communities ("**Communities**").

- i. **Nature of Rules.** Your participation in the Communities is subject to all of the Terms, including these Rules:
- **Your UGC.** All of your UGC either must be original with you or you must have all necessary rights in it from third parties in order to permit you to comply with these Terms and any applicable Additional Terms. Your UGC should not contain any visible logos, phrases, or trademarks that belong to third parties. Do not use any UGC that belongs to other people and pass it off as your own; this includes any content that you might have found elsewhere on the Internet. If anyone contributes to your UGC or has any rights to your UGC, or if anyone appears or is referred to in the UGC, then you must also have their permission to submit such UGC to Company. (For example, if someone has taken a picture of you and your friend, and you submit that photo to the Company as your UGC, then you must obtain your friend's and the photographer's permission to do so.)
  - **Speaking of Photos: No Pictures, Videos, or Images of Anyone Other Than You and Your Friends and Family.** If you choose to submit photos to the Service, link to embedded videos, or include other images of real people, then make sure they are of you or of you and someone you know – and only if you have their express permission to submit it.
  - **Act Appropriately.** All of your Service activities must be venue appropriate, as determined by us. Be respectful of others' opinions and comments so we can continue to build Communities for everyone to enjoy. If you think your UGC might offend someone or be embarrassing to someone, then chances are it probably will and it doesn't belong on the Service. Cursing, harassing, stalking, insulting comments, personal attacks, gossip, and similar actions are prohibited. Your UGC must not threaten, abuse, or harm others, and it must not include any negative comments based upon race, age, national origin, gender, sexual orientation, religion, disability, or any other status protected under applicable state



or federal law. Your UGC must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit. Your UGC must not exploit children under the age of 18.

- **Do Not Use for Commercial or Political Purposes.** Your UGC must not advertise or promote a product or service or other commercial activity, or a politician, public servant, or law.
- **Do Not Use to Solicit or Send Unwanted Communications.** Do not harvest or collect email addresses or other contact information of others from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications. Do not solicit personal information from anyone or solicit passwords or personally identifying information for commercial or unlawful purposes. This also includes not uploading, posting, transmitting, sharing or otherwise making available any unsolicited or unauthorized advertising, solicitations, promotional materials, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” or any other form of solicitation.
- **Do Not Use for Inappropriate Purposes.** Your UGC must not promote any infringing, illegal, or other similarly inappropriate activity.
- **Be Honest and Do Not Misrepresent Yourself or Your UGC.** Do not impersonate any other person, user, or company, and do not submit UGC that you believe may be false, fraudulent, deceptive, inaccurate, or misleading, or that misrepresents your identity or affiliation with a person or company. In the event you receive anything in consideration from us with respect to your UGC (e.g., coupons, sweepstakes entries, etc.) you represent you will include disclosure of the receipt of this consideration clearly and conspicuously as part of the UGC and include any other disclosures we may require.
- **Others Can See.** We hope that you will use the Communities to exchange information and content and have venue appropriate discussions with other members. However, please remember that the Communities are public or semi-public and UGC that you submit on the Service within a Community may be accessible and viewable by other users. Do not submit personally identifying information (e.g., first and last name together, password, phone number, address, credit card number, medical information, email address, social security number, or other personally identifiable information or contact information) on Community spaces and take care when otherwise disclosing this type of information to others.
- **Don’t Share Other People’s Personal Information.** Your UGC should not reveal another person’s address, phone number, email address, social security number, credit card number, medical information, financial information, or any other information that may be used to track, contact, or impersonate that individual, unless, and in the form and by the method, specifically requested by the Company (e.g., an email address to send an email invite to a friend).

- **Don't Damage the Service or Anyone's Computers or Other Devices.** Your UGC must not submit viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of the Service or any computer or other Device.

If you submit UGC that the Company reasonably believes violates these Rules, then we may take any legally available action that we deem appropriate, in our sole discretion. However, we are not obligated to take any action not required by applicable law. We may require, at any time, proof of the permissions referred to above in a form acceptable to us. Failure to provide such proof may lead to, among other things, the UGC in question being removed from the Service.

- ii. **Your Interactions With Other Users; Disputes.** You are solely responsible for your interaction with other users of the Service, whether online or offline. We are not responsible or liable for the conduct or content of any user. We reserve the right, but have no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment in your interactions with others (e.g., when you submit any personal or other information) and in all of your other online activities.

**C. Appropriate Content and Alerting Us of Violations.**

We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. We may include venue and content rules as Additional Terms. If you discover any content that violates these Terms or any applicable Additional Terms, then you may report it here. For alleged infringements of intellectual property rights, see Section 5.

**3. SERVICE AND CONTENT USE RESTRICTIONS.**

**A. Service Use Restrictions.**

You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other "hidden text" utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party, or are otherwise objectionable to the Company; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by

any means whatsoever or modify any Service source or object code or any Software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user's access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, the Company, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the UGC; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

**B. Content Use Restrictions.**

You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the Company Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third-party or on any third-party application or website, or otherwise use or exploit such content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an authorized officer of the Company or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience or the service.

**C. Availability of Service and Content.**

The Company, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason, in the Company's sole discretion, and without advance notice or liability.

#### 4. CREATING AN ACCOUNT

- A. If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your Device and for all activity under your account. Usernames and passwords must be personal and unique, not violate the rights of any person or entity, and not be offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us here of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights.
- B. Accounts may only be set up by an authorized representative of the individual that is the subject of the account and who is at least the age of majority where they reside. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

#### 5. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT.

If you are a copyright owner and believe infringing use of your content is on our Service, or you are a User that has received notice that you have posted allegedly copyright infringing content on our Service, [click here](#) for more information.

- A. **DMCA Notice.**

The Company asks our users to respect the intellectual property rights of others. It is our policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In the Company's sole discretion, the Company may remove content that may be infringing on another person's intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act ("DMCA") and other applicable law, the Company has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers.
- B. If we remove or disable access in response to a DMCA Copyright Infringement Notice, we will make a good faith attempt to contact the owner or administrator of the affected content so that they may make a counter-notification. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that work has



It is often difficult to determine if your copyright has been infringed. The Company may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and the Company may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting the Company's other rights, the Company may, in appropriate circumstances, terminate a repeat infringer's access to the Service and any other website owned or operated by the Company.

**C. Counter-Notification.**

If access on the Service to a work that you submitted to the Company is disabled or the work is removed as a result of a DMCA Copyright Infringement Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- i. a legend or subject line that says: "DMCA Counter-Notification";
- ii. a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the full URL of the page(s) on the Service from which the material was removed or access to it disabled);
- iii. a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- iv. your full name, address, telephone number, email address, and the username of your Account;
- v. a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Northern District of

New York), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and

vi. your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Service. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

## **6. NOTICES, QUESTIONS AND CUSTOMER SERVICE.**

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: Legal Department, Attention: Infringement Claims, 7248 Morgan Road, Liverpool, New York 13088. If you have a question regarding the Service, you may contact the Company Customer Support by sending an email here or calling us at (315) 461-3600. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive Terms or applicable Additional Terms.

## **7. ARBITRATION AND DISPUTE TERMS.**

Unless you exercise your right to reject arbitration under Section 7.J below, the following Arbitration terms will apply:

### **A. General.**

Either you or we may elect - and require the other party - to arbitrate any Claim (defined below) under the following terms. If you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) have a court, a jury or an administrative agency decide the Claim; (ii) participate in a class action in court or in arbitration; (iii) act as a private attorney general in court or in arbitration; or (iv) join or consolidate your Claim(s) with claims of any other person. The right to appeal and the right to pre-arbitration discovery are more limited in arbitration

than in court. Other rights available in court may also not be available in arbitration.

**B. Definitions.** The following definitions apply:

- i. Our **“Notice Address”** is P.O. Box 220, Liverpool, NY 13088. We may change our Notice Address by giving you notice of the change. All demands or notices to us must be sent to the Notice Address and must comply with any further requirements set out below.
- ii. **“Administrator”** means the American Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, [www.adr.org](http://www.adr.org), 800-778-7879 or any other company selected by mutual agreement of the parties. If AAA cannot or will not serve and the parties cannot select an Administrator by mutual consent, an Administrator will be selected by a court. However, no arbitration may be administered, without the consent of all parties, by any Administrator having a policy that is inconsistent with subsection 7.C below, captioned “No Class Actions, Etc.” (the “Class Action Waiver”). Subject to the foregoing, the party initiating arbitration selects the Administrator.
- iii. **“Claim”** means any and all claims, disputes or controversies between you and us that in any way arise from or relate to your past, present or future relationship with us, including but not limited to: (1) your purchase of goods or services from us; (2) your visits to our website, showrooms, or other properties; (3) our use of any personal (or other) information you give us, or the storage, theft or loss thereof; (4) issues regarding the construction, quality or written or verbal description of, our goods and services; (5) calls, texts, emails, advertisements, promotions or statements made by us or on our behalf; (6) disclosures, handouts, offers, negotiations or discussions regarding purchase, discount, price or credit terms; (7) purchase financing, credit or rent-to-own arrangements you requested or we offered or provided or helped you obtain; (8) attempts we make to collect debts from you; (9) warranty, service, repair or Platinum Protection Plan issues; (10) delivery of goods or damage therefrom; (11) any practice, notice or other communication relating to such foregoing matters; or (12) personal or monetary injuries allegedly suffered by you or imposed on us by statute or regulation. “Claim” has the broadest reasonable meaning, and includes disputes arising from visits, purchases, actions or omissions prior to, contemporaneous with, or subsequent to the date of this Agreement, initial claims, counter- and cross-claims, third-party claims, and disputes based on theories of contract, negligence, intentional tort, restitution, consumer rights, fraud, deception, constitution, statute, regulation, ordinance, common law or equity (including claims for injunctive or declaratory relief). However, “Claim” does not include disputes about the enforceability of the parties’ agreement to arbitrate Claims, the scope of Claims covered by this Agreement, the enforceability of the Class Action Waiver, the



final sentence of subsection (h) under the caption “Survival, Severability, Primacy,” and/or this sentence, which are for a court and not an arbitrator to decide.

**C. No Class Actions, Etc. (the “Class Action Waiver”).**

**As permitted by applicable law and notwithstanding any language herein to the contrary, if you or we elect to arbitrate a Claim, neither you nor we will have the right to: (i) participate in a class action in court or in arbitration, either as a class representative, class member or class opponent; (ii) act as a private attorney general in court or in arbitration; or (iii) join or consolidate Claims with claims of any other person, and the arbitrator shall have no authority to conduct any such class, private attorney general or multiple-party proceeding.**

**D. Starting or Demanding Arbitration.**

If you or we elect to arbitrate a Claim, the party electing arbitration must notify the other party in writing. This notice can be given after the beginning of a lawsuit and can be given in papers filed in the lawsuit (for example, a motion by the defendant to compel arbitration of claims asserted by the plaintiff in a lawsuit filed in court). Otherwise, your notice must be sent to the Notice Address, Attn: Legal Claim, and our notice must be sent to the most recent address for you in our files. If a party files a lawsuit in court asserting a Claim that is subject to arbitration and the other party files a motion to compel arbitration with the court which is granted, it will be the responsibility of the party asserting the Claim to start the arbitration proceeding in accordance with the administrator’s rules and procedures. If arbitration is commenced or demanded, the Claim shall be resolved by arbitration under this Agreement and the Administrator’s applicable rules. We will not elect to arbitrate any individual action brought by you in small claims court or your state’s equivalent court, unless such action is transferred, removed, or appealed to a different court.

**E. Arbitrator Selection; Hearing Location; Costs; Discovery.**

(i) The Administrator will appoint the arbitrator in accordance with the Administrator’s rules. However, unless the parties agree otherwise, the arbitrator must be a retired or former judge, or a lawyer with at least 10 years of experience; (ii) The arbitration hearing will take place in a location reasonably convenient for you; (iii) If you cannot obtain a waiver of the Administrator’s or arbitrator’s fees, we will consider in good faith any request by you for us to bear such fees. We will pay for our own attorneys, experts and witnesses and will pay the reasonable fees and charges of your attorneys, experts and witnesses if you win the arbitration and payment of such fees and charges is required by law. We will pay any of the foregoing fees and charges if and to the extent we are required to in order to make this Agreement enforceable; (iv) In addition to the parties’ rights to discovery under the Administrator’s rules, either party may ask the arbitrator for more information from the other. The arbitrator will decide the issue after allowing the other party the opportunity to object.

**G. Governing Law.**

This Agreement governs transactions involving interstate commerce; it shall be governed by the FAA and not by any state law concerning arbitration. The arbitrator shall follow applicable substantive law to the extent consistent with the FAA, and applicable privilege rules, and shall be authorized to award all remedies available in an individual lawsuit under applicable substantive law, including, without limitation, compensatory, statutory and punitive damages (which shall be governed by constitutional standards applicable in judicial proceedings), declaratory, injunctive and other relief, and attorneys' fees and costs. Upon timely request of either party, the arbitrator shall write a brief explanation of the basis of the award. The arbitrator will follow rules of procedure and evidence consistent with the FAA, this Agreement and the Administrator's rules.

**H. Survival, Severability, Primacy.**

This Agreement lasts for as long as you and we have Claims that may be asserted against each other. By way of example, this Agreement shall survive our delivery of product to you, the cancelation of any purchase, any refund to you, termination of any credit agreement, your fulfillment or default of obligations under any such agreement and/or your bankruptcy (to the extent permitted by law). Upon any conflict or inconsistency between this Agreement and the Administrator's rules, this Agreement will govern. If any portion of this Agreement, other than the Class Action Waiver, is found unenforceable, the remainder shall nevertheless remain in force. If the Class Action Waiver is found unenforceable, only this sentence of this Agreement will remain in force and the remaining provisions shall be null and void; however, the determination concerning the Class Action Waiver shall be subject to appeal.

**I. Special Payment.**

Before initiating a lawsuit or arbitration, the Claimant must give the Defending Party written notice of the Claim (a "Claim Notice") and a reasonable period, not less than 30 days, to resolve the Claim individually. Any Claim Notice to you shall be mailed to the address for you shown in our records. Any Claim Notice to us shall be mailed to the Notice Address, Attn: Legal Claim. Any Claim Notice you send must include your name, address and telephone number, and be signed by you. It must explain the basis of the Claim and the relief demanded. The Claimant must reasonably cooperate in providing any information about the Claim that the Defending Party reasonably requests. If (i) you submit a timely Claim Notice on your own behalf (and not on behalf of any other party) as described herein; (ii) we refuse to provide you the relief requested before an arbitrator is appointed; and (iii) an arbitrator later determines that you were entitled to such (or greater) relief, the arbitrator shall award you at least \$5,000 plus the attorneys' fees to which you would otherwise be entitled.

**J. Right To Reject Arbitration.**

**You may reject this Agreement by mailing a rejection notice to the Notice Address,**

**Attn. Arbitration Rejection, within 60 days after you use the Service for the first time. Any rejection notice must include your name, address and telephone number; the date you first used the Service; and your signature. Your rejection notice will apply only to this Agreement, but will not affect any term of any other contract between you and us (including without limitation any prior or subsequent credit agreement), nor will it change your obligation to arbitrate Claims covered by any prior or subsequent Arbitration Agreement.**

**8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

- A. AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by applicable law, the Company and its direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “Company Parties”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Company Licensed Elements, UGC or other Company products or services, except as set forth in subsection C, below.**
- B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, COMPANY PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.**
- C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY COMPANY PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY COMPANY PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) COMPANY PARTIES’ LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY COMPANY PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST COMPANY PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

## 9. LIMITATIONS OF OUR LIABILITY.

- A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY COMPANY PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND**, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, Company Licensed Elements, UGC or other Company products or services, except, to the extent not waivable under applicable law, for direct damages for personal injury caused by a physical product manufactured, sold or provided by Company.
- B.** The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Company Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).
- C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID COMPANY IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).**
- D. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY COMPANY PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY COMPANY PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) COMPANY PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY COMPANY PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST COMPANY PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

## 10. UPDATES TO TERMS.

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission).

EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

## **11. GENERAL PROVISIONS.**

### **A. Company's Consent or Approval.**

As to any provision in these Terms or any applicable Additional Terms that grants the Company a right of consent or approval, or permits the Company to exercise a right in its "sole discretion," the Company may exercise that right in its sole and absolute discretion. No Company consent or approval may be deemed to have been granted by the Company without being in writing and signed by an authorized officer of the Company.

### **B. Indemnity.**

As permitted by applicable law, you agree to, and you hereby, defend (if requested by the Company), indemnify, and hold Company Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Company Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) Company Parties' use of the information that you submit to us (including your UGC) subject to our Privacy Policy (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by Company Parties, in the

defense of any Claim and Losses. Notwithstanding the foregoing, Company Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Parties reserve the right to assume the exclusive defense and control of any Claims and You will not settle any Claims and Losses without, in each instance, the prior written consent of an authorized officer of a Company Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

**C. Operation of Service; Availability of Products and Services; International Issues.**

The Company controls and operates the Service from the U.S.A., and makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

**D. Export Controls.**

You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

**E. Severability; Interpretation.**

If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

**F. Investigations; Cooperation with Law Enforcement; Termination; Survival.**

As permitted by applicable law, the Company reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by the Company in accordance with its Privacy Policy in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by the Company to comply with law enforcement requests or legal requirements in accordance our Privacy Policy, (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations,

at any time, without notice, for any reason and without any obligation to you or any third-party. Any suspension or termination will not affect your obligations to the Company under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from the Company, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to the Company in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**G. Assignment.**

The Company may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an authorized officer of the Company.

**H. Complete Agreement; No Waiver.**

These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or the Company in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**I. California Consumer Rights and Notices.**

California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act and the California Shine the Light Act in our Privacy Policy.

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California, 95834, or by telephone at (916) 445-1254. Hearing-impaired users can reach the Complaint Assistance Unit at TDD (800) 326-2297 or TDD (916) 322-1700. Their website is located at: <http://www.dca.ca.gov>.

Any California residents under the age of eighteen (18) who have registered to use the Service, and who have posted content or information on the Service, can request that such information be removed from the Service by contacting us at the email or address set forth in Section 6 making such a request, stating that they personally posted such content or information and detailing where the content or information is posted. We will make reasonable good faith efforts to remove the post from prospective public view or anonymize it so the minor cannot be individually identified. This removal process cannot ensure complete or comprehensive removal. For instance, third-parties may have republished the post and archived copies of it may be stored by search engines and others that we do not control.

//End Terms of Use//

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