

## HSN Terms of Purchase

**Last Updated: January 28, 2020**

When you register on the site, B-Stock Solutions is collecting the information that you provide and will protect it in accordance with its privacy policy. Should you bid on and win Inventory on the site, you will become a HSN customer and B-Stock will share the information required for HSN to fulfill your order. HSN will protect that information according to the terms of its privacy policy. Therefore, by registering to use this site, you are agreeing to the privacy policies of both B-Stock Solutions and HSN.

### 1. Acceptance of Terms of Purchase

**1.1** Acceptance of Terms. These Terms are an ongoing contract between you and HSN Service, LLC (“HSN” or “we”) and apply to your use of HSN’s online marketplace located at (<https://hsn.bstock.com>) (the “Site”), hosted and configured by B-Stock Solutions, Inc. (“BStock”), through which you may purchase Inventory Products from HSN in consideration of the mutual promises and other good and valuable consideration. These Terms of Purchase govern your purchase of Inventory Products from the Site. If you are entering into these Terms of Purchase on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms of Purchase. You may not use the Site if you do not have such authority. By checking the “I agree to the Terms of Purchase” box, you accept and agree to be bound by these Terms of Purchase each time you log into the Site. If you do not agree to these Terms of Purchase, you should not bid on or purchase Inventory Products from the Site. You may preserve these Terms of Purchase in written form by printing it for your records, and you waive any other requirement that these Terms of Purchase be evidenced by a written document.

**1.2** Modifications to Terms. We reserve the right, from time to time, with or without notice to you, to change these Terms of Purchase in our sole and absolute discretion. If we make material changes to these Terms of Purchase, we will notify you with an in-app message, by email, or by means of a notice on our Site. The most current version of these Terms of Purchase will supersede all previous versions and can be reviewed by clicking on “Terms of Purchase” located at the bottom of the pages of the Site. Your use of the Site or continued purchases after changes are made mean that you agree to be bound by such changes. No purchase order or other documentation issued by you to us will alter these Terms of Purchase. You agree to keep your email address and other contact information current at all times.

### 2. Additional Definitions

**2.1** “Buyer” or “you” or “your” shall mean the individual who purchases Inventory Products from HSN through the Site under the terms described herein and the entity that such individual represents in making the purchase, if applicable.

**2.2** A “Completed Purchase” occurs when (i) you have provided to HSN all of the purchase information requested in the Email Notification in the manner specified in such Email Notification to complete your purchase and (ii) the Purchase Price for the Inventory Products has been received in the HSN account specified in the Email Notification.

**2.3** “Extended Auction” shall mean an auction where if a bid is entered within the final 5 minutes of the original closing time, the auction will be extended by 3 minutes. If a bid is then placed before the extended 5 minutes elapses, the auction will be extended again for 3 minutes and the listing will continue to be extended until there are no new bids placed within the final 5 minutes of the auction.

**2.4** “Inventory Products” shall mean HSN’s inventory products that are available for purchase on the Site under the terms described herein.

**2.5** “Listing” shall mean the content on the Site associated with particular Inventory Products, including, but not limited to, the description and quantity of the Inventory Products. HSN shall have the right to modify or correct any Listing at any time and such modification shall be binding on any purchase of any Inventory Products purchased after such modification had been made.

**2.6** “Promotional Content” shall mean any and all information, service or content provided by HSN or its agents in any medium in connection with these Terms of Purchase, including promotional content and Listings to be displayed on the Site.

### 3. Auction Process

**3.1** Inventory Products. Inventory Products consist of customer returns or company stock merchandise, some of which may have been previously shipped. The condition of the Inventory Products will vary and standard designations regarding a product’s condition will be set forth in the Listing. The Inventory Products are provided to you “as is” for purchase on the Site. The quantity and/or value of actual Inventory Products in each lot may vary up to 5 percent (5%)

less or greater than the number set forth in the Listing and may include up to 5 percent (5%) quantity and/or value of more damaged items than designated as "Damaged" in the Listing. Accessories such as remote controls, cables and instructions may or may not be included. Inclusion of accessories will be delineated in the Listing.

**3.2 Auction Process.** Inventory Products will be sold pursuant to the auction process set forth in this Section 3 (the "Auction"). If you wish to bid on Inventory Products, you will be required to enter your bid amount. Your bid must be (i) in an amount higher than the bid listed as the minimum opening bid and the "current winning bid," as applicable, (ii) in the bid increments set forth on the bid page and (iii) placed before the scheduled closing time for such Auction (including any additional time added for an Extended Auction), for you bid to be eligible for the Auction. If your bid is deemed the winning bid you will be notified by email (the "Email Notification") at the email address you provided when you registered for your account, as updated by you from time to time by following instructions on the Site. This email will serve as your official proof of purchase and/or official invoice. Any additional formal invoice or proof of purchase outside of the original winning notification is not available. It is your responsibility to keep your email address current and to timely check your email to determine if you are the winning bidder for any Auction in which you participated. HSN is not responsible for the failure of an Email Notification to reach a winning bidder for any reason, including, but not limited to, technical problems or other system error.

**3.3 Winning Bids.** If your bid is deemed the winning bid at the end of the Auction for certain Inventory Products, you agree to promptly purchase such Inventory Products pursuant to the terms and instructions set forth in this Terms of Purchase and in the Email Notification. If you fail to register a Completed Purchase within two (2) business days of when the Email Notification is sent by HSN, you shall forfeit any right to purchase such Inventory Products and HSN may deactivate your account and password so you can no longer access the Site and, at its sole discretion, may choose to (i) contact the next highest bidder in the Auction for such Inventory Products and offer to sell such Inventory Products to such bidder at such bidder's bid price or (ii) post such Inventory Products on the Site for sale in a new Auction. Penalties for failure to register a Completed Purchase are set forth in Section 5.1 below.

#### **4. Conditions to Sale; Payment**

**4.1 Purchase Price.** In consideration for your payment of the purchase price set by the winning bid, any included shipping cost, and any additional fees, for certain Inventory Products in an Auction (the "Purchase Price"), HSN hereby agrees to sell to you such Inventory Products for which you have posted the winning bid pursuant to your compliance with the terms set forth in this Terms of Purchase and the Email Notification. You agree to pay the Purchase Price for the Inventory Products by wiring the full amount of the Purchase Price to the bank account set forth in the wiring instructions included in the listing descriptions and winning bid Email Notifications, within 2 business days after end of Auction. Your failure to pay the Purchase Price means that the winning bid will be forfeited and HSN has the right to relist the auction or sell to the next highest bidder in its sole discretion. Nothing in these Terms of Purchase shall otherwise obligate HSN to sell Inventory Products to you. You shall be responsible for all taxes, shipping costs and any other expenses incurred in connection with your purchase hereunder.

**4.2 Canceled Bids and Purchases.** Please note that there may be certain bids and purchases that we are unable to accept and must cancel. We reserve the right, at our sole discretion, to refuse or cancel any bid or purchase for any reason. For example, HSN may cancel your bid or purchase if there are inaccuracies or errors in product or bid information, or problems identified by our credit and fraud avoidance department. While HSN strives to provide accurate product and bid information, typographical or system errors may occur. In the event that bids for Inventory Products are incorrectly listed or Inventory Products are listed with incorrect information due to an error in quantity or other product information, we shall have the right, at our sole discretion, to refuse or cancel any purchases placed for such Inventory Products. In the event that we must cancel a bid or purchase, we will cancel your bid or purchase and notify you by email of such cancellation.

**4.3 Payment Terms.** You shall submit the Purchase Price to HSN under the payment terms set forth in the Email Notification and on the Site. HSN may revise the payment terms from time to time in its sole and absolute discretion upon notice to you; provided, however, that any change to payment terms will not be effective for any then-pending sale but will only be effective for sales subsequent to such notice. Upon acceptance of the Purchase Price and the fulfillment of any other conditions to the sale, HSN will sell, assign, transfer and convey to you all of HSN's right, title and interests in and to the Inventory Products and shall arrange with you for delivery of such Inventory Products in the manner set forth in Section 5 below. Merchandise sold pursuant to these Terms of Purchase is for resale only. ALL SALES ARE FINAL, AND THERE ARE NO REFUNDS, CREDITS, OR EXCHANGES.

**4.4 Identification of HSN.** You shall not sell, lease or otherwise transfer or dispose of any of the Inventory Products, unless you first Demanufacture such Inventory Products. "Demanufacture" means, in accordance with HSN's specifications, to remove, if possible, all of the identifying marks, including, but not limited to, HSN's or its affiliates' names, logos, serial numbers, UPC numbers, RA numbers, and other identifying marks (including but not limited to

tags, labels, price stickers, bar codes, or other carton or packaging markings) from the packaging. Although you should not have access to any HSN customer information, including without limitation, sales receipts, addresses, phone numbers, credit card numbers or other personally identifiable information, if you receive any such information that may be included with the Inventory Products, you will remove, delete, and destroy all such information. You shall not under any circumstances (i) identify HSN, its parent or any of its affiliates or divisions as the source of the Inventory Products; (ii) advertise the Inventory Products using any name relating to HSN, its parent or any of its divisions or affiliates, or any of its or their private labels, in any manner; (iii) make reference to HSN or its parent or any of its affiliates or divisions in any signing or advertising; or (iv) advertise the Inventory Products using any name related to HSN's suppliers.

## **5. Shipment and Acceptance of Inventory products**

**5.1 Removal and Shipment of Inventory Products.** The Inventory Products purchased by you shall be made available to you for receipt at the HSN facility identified in the Email Notification (the "Inventory Location") at a time mutually agreed to by you and HSN (the "Pickup Time"). You or your agent must schedule the Pickup Time by contacting HSN pursuant to the instructions set forth in the Notification Email. You shall be solely responsible for removal of the Inventory Products from HSN's premises and for all shipping arrangements (including, without limitation, permits, costs and licenses), expenses (including, but not limited to, insurance) and labor. Your employees, equipment, and property, and that of your agents, enter and remain on HSN's premises entirely at your risk as regards any and all hazards excepting only those found to be caused by HSN's sole negligence. While on HSN's premises, your employees and agents must observe all of HSN's rules and regulations. You shall remove all Inventory Products from the Inventory Location within three (3) business days of receiving notice from HSN that the Inventory Products are ready for pick-up. If you fail to remove such Inventory Products within this time, HSN, in its sole discretion, may choose to keep such Inventory Products, list such Inventory Products for auction on the Site and refund to you the Purchase Price you paid to HSN less (i) a storage charge of \$10 per pallet per each of the days HSN held the Inventory Products for you after you registered a Completed Purchase and (ii) a restocking fee of twenty percent (20%) of the Purchase Price.

**5.2 Title; Risk of Loss.** Title to the Inventory Products shall remain with HSN until you take possession of the Inventory Products at the Inventory Location. You expressly acknowledge that risk of loss and liability for the Inventory Products shall pass to you upon your or your agent's receipt of the Inventory Products at the Inventory Location. You expressly acknowledge and agree that you shall have no right to refuse or return the Inventory Products after accepting possession of the Inventory Products at the Inventory Location.

**5.3 Acceptance.** Your acceptance of possession of the Inventory Products from HSN pursuant to Section 5.2 shall constitute an unqualified acceptance of the Inventory Products and a waiver by you of all claims with respect thereto. All sales are final.

**5.4** You may not at any time, directly or indirectly, through any subsidiary, affiliate, or other arrangement, sell the Products to (a) any company or person engaged in producing or distributing live or taped television shopping programming in the United States or to anyone affiliated with such company or person; or (b) Amazon Marketplace or any successor distribution channel to the Amazon Marketplace. Further, any sale of the Merchandise to a third party by Buyer shall be subject to the aforementioned restrictions.

**5.5** Buyer represents and warrants to HSN that (a) Buyer has all necessary authority and rights to comply with this Terms of Purchase; and (b) the performance by Buyer of its promises and commitments contained in this Terms of Purchase will not conflict with or be prohibited or restricted by any agreements or commitments with third parties, or violate any applicable laws, government rules, regulations, or court orders.

**5.6 Further Assurances.** Each party agrees that it will execute and deliver, or cause to be executed and delivered, all such other instruments, and it will take all reasonable actions, as may be necessary to transfer and convey the Inventory Products to Buyer and to consummate the transactions contemplated herein.

**5.7** Buyer will indemnify and hold HSN, its parents, subsidiaries, and affiliates and each of their officers, directors, agents, and employees harmless from and against any and all claims, actions, expenses (including attorneys' fees and costs), liabilities, damages, judgments, and settlements arising from or in connection with (a) Buyer's performance under this Terms of Purchase; (b) any breach or misrepresentation by Buyer of any of its covenants, promises, warranties, or representations hereunder; or (c) any act or omission outside the scope of Buyer's authority under this Terms of Purchase.

**5.8** This Sales Order will be binding upon and inure to the benefit of the parties and their respective successors and permitted assignees. Buyer may not assign any rights, duties, or responsibilities under this Sales Order without the prior written consent of HSN. Failure by HSN to enforce any rights under this Sales Order shall not be construed as a waiver of such rights nor shall a waiver by HSN of default in one or more instances be construed as constituting a

continuing waiver or as a waiver in other instances. No modification or waiver of any of the provisions hereunder will be valid unless made in writing and signed by both parties. Buyer agrees that in the event it violates any of the provisions hereunder, HSN will be entitled to seek all relief and remedies available at law or in equity, including injunctive relief, specific performance, or temporary restraining orders. This Sales Order embodies the entire understanding and agreement of the parties with respect to the sale of Merchandise, superseding all prior or contemporaneous agreements, whether written or oral. This Sales Order shall be governed by and construed in accordance with the internal laws of the State of Florida without regard to conflict of laws principles. Any suit brought under or in connection with this Sales Order may be brought only in the courts of the State of Florida, Pinellas or Hillsborough County, or of the U.S. District Court for the Middle District of Florida, Tampa Division, and HSN and Buyer consent to the personal jurisdiction and venue of such courts. If any provision of this Sales Order is declared void or otherwise unenforceable, such provision will be deemed to have been severed from the remaining provisions, which will otherwise remain in full force and effect according to their remaining terms.

**5.9** All shipping states must match the state where your business is registered (reseller certificate). Orders that do not adhere to these regulations will be canceled.

## **6. Confidentiality**

**6.1** Confidential Information. Each party acknowledges that by reason of its relationship to the other party hereunder it will have access to certain information and materials concerning the other party's business that are confidential and of substantial value to the other party, which value would be impaired if such information were disclosed to third parties. In particular, the parties hereto acknowledge that the information regarding the Purchase Price and any particular sale are confidential to HSN. Each party will, and will cause its affiliates and employees to, protect and not disclose information that is considered confidential and use this information only to fulfill its obligations under these Terms of Purchase. Notwithstanding the foregoing, you understand that BStock will have access to confidential information pertaining to you. You may not make any public announcement about these Terms of Purchase without HSN's prior written approval and consent. Notwithstanding anything in this Section 6.1 to the contrary, any information (i) already in the public domain through no fault of the receiving party, (ii) independently developed by the recipient without the use of or access to the other party's confidential information, or (iii) released to the public through no action or inaction by the receiving party, will not be considered confidential information hereunder. The receiving party may disclose the disclosing party's confidential information upon the order of any court of competent jurisdiction or as otherwise required by law or legal process, provided that prior to such disclosure the receiving party shall inform the disclosing party of such order, if permitted by law, in order to provide the disclosing party with an opportunity to contest such order or to seek such other protective action as the disclosing party may elect. This Section 6 shall survive each purchase transaction hereunder.

## **7. HSN Marks**

**7.1** You acknowledge that HSN or, in applicable instances, HSN's licensors or affiliates, retains the entire right, title, and interest in and to all intellectual property (including, but not limited to, any copyrights, patents, trademarks, trade names, service marks, logos, and trade dress) in connection with the Merchandise (collectively, "HSN's Marks").

**7.2** You shall not use or exploit HSN's Marks in any manner or media and shall not sell the Merchandise under, or advertise Merchandise in connection with, HSN's Marks. You further understand that You shall have no right to or interest in (a) HSN's Marks; (b) any other intellectual property owned, used, or claimed now or in the future by HSN, its parents or affiliates; or (c) any name that includes "HSN" or any registered trade or service mark of any HSN, Inc. company.

## **8. Warranty Disclaimer; Limitation of Liability**

EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE INVENTORY PRODUCTS ARE PROVIDED BY HSN TO YOU "AS IS" AND HSN DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE INVENTORY PRODUCTS OR ANY OTHER MATTER, INCLUDING WITHOUT LIMITATION THE INVENTORY PRODUCTS' CONDITION OR QUALITY OR THE WARRANTIES OR CONDITIONS OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF PROFITS OR OTHER CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THESE TERMS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND/OR REGARDLESS OF WHETHER SUCH LOSSES WERE REASONABLY FORESEEABLE, ARISING FROM ANY CAUSE INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE, OR ANY OTHER ECONOMIC LOSSES. IN NO EVENT SHALL HSN'S LIABILITY FOR ANY AND ALL LOSSES OR

DAMAGES RESULTING FROM THESE TERMS OF PURCHASE, EXCEED THE PURCHASE PRICE PAID BY YOU TO HSN FOR THE INVENTORY PRODUCTS AT ISSUE. HSN SHALL NOT BE HELD LIABLE FOR ANY ERROR IN A LISTING THAT HSN CORRECTS PRIOR TO THE PURCHASE OF THE INVENTORY PRODUCTS TO WHICH THAT LISTING APPLIES. THIS LIMITATION OF LIABILITY SHALL SURVIVE EACH PURCHASE TRANSACTION. Therefore, some of the limitations set forth in this Section may not apply to you.

## **9. Use of the Site**

You agree and acknowledges that BStock makes no guaranty of the accuracy, correctness or completeness of any Promotional Content and is not responsible for: any errors or omissions arising from the use of any thereof; any failures, delays or interruptions in the delivery of any Promotional Content contained with the Site; losses or damages arising from the use of the Promotional Content provided by the Site; any conduct by you in connection with the Site; or any Promotional Content or products provided through or in conjunction with the Site. You must comply with the operating rules and policies applicable to the Site as may be published or provided by BStock or HSN in writing (including by posting on the Site) from time to time.

## **10. Breach of Terms of Purchase**

If you fail to comply with any term or condition in this Terms of Purchase, HSN may immediately terminate your account, deactivate your password and seek any other remedy available to HSN or its affiliates.

## **11. General Provisions**

**11.1** These Terms of Purchase will be governed by the laws of the state of **Florida**, without reference to any applicable conflict of law rules, the Convention on Contracts for the International Sale of Goods, or any local laws implementing such convention in any jurisdiction where the Inventory Products are sold. You irrevocably consent to the exclusive venue and jurisdiction of Pinellas County, Florida courts for any action or proceeding arising out of these Terms of Purchase. YOU HEREBY WAIVE ANY RIGHTS THAT YOU MAY HAVE TO BRING DISPUTES FOR RESOLUTION BEFORE ANY OTHER COURT, TRIBUNAL OR FORUM. No waiver of or failure to enforce any provision of these Terms of Purchase shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing. The division of these Terms of Purchase into separate sections, subsections and/or exhibits and the insertion of titles or headings is for convenience of reference only and shall not affect the construction or interpretation of these Terms of Purchase. If any provision is held to be invalid, then that provision will be modified to the extent necessary to make it enforceable, and any invalidity will not affect the remaining provisions.

**11.2** Force Majeure. HSN shall not be liable to the other party for failure or delay in performance hereunder due in whole or in part to an act of God, strike, lockout or other labor dispute, civil commotion, sabotage, fire, flood, explosion, acts of any government, unforeseen shortages or unavailability of fuel, power, transportation, or supplies, and any other causes which are not within HSN's reasonable control, whether or not of the kind specifically enumerated above.

**11.3** The Terms of Purchase was last updated on **January 28, 2020**. Please check our Terms of Purchase periodically for changes.