

## JCPenney Liquidation Auctions Terms of Purchase

**Last Updated: October 20, 2019**

These Terms of Use and Purchase (this "**Agreement**") are entered into by and between you and J. C. Penney Corporation, Inc., a Delaware corporation ("**JCPENNEY**" or "**We**" or "**Us**"). In consideration of your use of and access to this Internet site comprising JCPENNEY Liquidation Auctions (the "**Site**"), and the promises and obligations herein, and intending to be legally bound, you and JCPENNEY hereby agree as follows:

Your access to and use of this Site is subject to this Agreement, which incorporates the separately posted Privacy Policy, as well as any modifications to them issued by JCPENNEY. If you submit any bids or make any purchases at this Site on behalf of any entity, you represent and warrant that you are authorized to accept this Agreement on such entity's behalf and that such entity agrees to be responsible for your activities under this Agreement, and that your purchases from this Site are solely for resale to third parties. BY USING THIS SITE OR BY CHECKING THE "I AGREE TO THE TERMS OF PURCHASE" BOX, YOU ACCEPT AND AGREE TO, AND WILL BE DEEMED TO BE BOUND BY, THIS AGREEMENT EACH TIME YOU LOG INTO THE SITE AND/OR PLACE A BID ON AN AUCTION LISTING. If you do not want to be bound by this Agreement, do not use this Site. This Agreement governs only this Site, and does not govern any other website operated by or for JCPENNEY or any of its affiliates. No purchase order or other documentation issued by you to us will alter this Agreement. 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.

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, your purchase will be governed by the Terms of Use and Purchase and B-Stock will share only that information with JCPENNEY required for JCPENNEY to fulfill your order. JCPENNEY will protect that information according to the terms of its Privacy Policy. By registering to use this site, you are agreeing to B-Stock Solutions' collection, use and disclosure of your information pursuant to the terms of the B-Stock Solutions Privacy Policy and, if you bid on Inventory and win such Inventory, you also agree to JCPENNEY's Privacy Policy with respect to the use and disclosure of such information provided to JCPENNEY by B-Stock Solutions.

### 1. General.

This Site provides information (i) concerning Products made available by JCPENNEY for auction, (ii) to registered users of the Site, and (iii) for the opportunity to bid on and purchase such Products. If you are a registered user of this Site, your bids on and purchases of the Products on this Site are governed, as between you and B-Stock, by the terms and conditions to which you agreed with B-Stock Solutions, Inc. ("B-Stock") as a condition of your registration ("Buyer Terms"). Further, if any area within the Site contains additional specific terms and conditions concerning its use or the Products ("Specific Terms"), those Specific Terms are in addition to this Agreement and the Buyer Terms. To the extent there is a direct conflict between this Agreement and the Buyer Terms or between this Agreement and the Specific Terms, this Agreement or the Specific Terms, as applicable, shall prevail with respect to your access to and use of this Site and purchase of the Products on the Site. This Agreement applies to all offers made by us, all purchases and orders placed by you and all agreements concluded between us in relation to the Products offered on this Site.

### 2. Definitions.

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

**2.2** "Email Notification" means the email you receive after a bid you place for Products available for sale on the Site is deemed the winning bid for such Products. The Email Notification will be sent to the email address provided when you registered for your account, as updated by you from time to time by following instructions on the Site.

**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 elapse, 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** "Products" shall mean products that are available for purchase from JCPENNEY on the Site under the terms described herein.

**2.5** "Listing" or "Listings" shall mean the content on the Site associated with particular Products, including, without limitation, the description and quantity of the Products.

### **3. Certain Obligations.**

By placing a bid on the Site you are entering into a binding contract. All bids on Products are active until the auction Listing ends. If you win an auction Listing, you are obligated to purchase the Products in the Listing. The prices displayed on the Site are quoted in U.S. dollars and are valid and effective only within the United States, and such prices do not include shipping and handling charges or taxes. You are responsible for the payment of any shipping and handling charges and, if applicable to your purchase, any sales or use taxes. Upon winning an auction, you agree and acknowledge that you will be liable for a sum that includes your winning bid amount, shipping and handling charges, and any applicable taxes. JCPENNEY does not ship Products outside the continental United States.

### **4. Auction Process.**

**4.1** Products. The condition of the Products made available by JCPENNEY for auction will vary, and the Products may consist of customer returns or items that may or may not have been previously sold. Accessories, such as remote controls, cables and instructions, may or may not be included. The various categories of conditions of the Products are described in the Conditions section of the Site, and each Listing will specify the condition(s) of the Products in such Listing. Further, the actual quantity of Products provided to the winning bidder may vary by up to five percent (5%) from the quantity set forth in the Listing.

**4.2** Information. To participate in any auction and/or purchase any Products on this Site, you must submit a valid and current state-issued resale certificate and such additional information as may be requested via the Site or by B-Stock or JCPENNEY. You agree (i) that all information you provide to register with this Site or otherwise, including but not limited to through the use of any interactive features on this Site, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our Privacy Policy, (i) to provide accurate, current and complete information; (ii) maintain and promptly update any information in your account (including all contact information); (iii) maintain the security of your password and accept all risks of unauthorized access to your account and the information you provide under this Agreement; and (iv) promptly notify B-Stock and JCPENNEY if you discover or otherwise suspect any security breaches related to your account or the Site. We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time if, in our opinion, you have violated any provision of this Agreement.

**4.3** Auction Process. Products will be sold pursuant to the auction process set forth in this Section 4. If you wish to bid on Products, you will be required to enter your bid amount. In order for your bid to be eligible for the auction, your bid must be (i) in an amount higher than both the amounts 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 end time for such auction (including any additional time added for an Extended Auction). If your bid is deemed the winning bid, you will receive an Email Notification. 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 participate. This Email Notification 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. JCPENNEY is not responsible for the failure of an Email Notification to reach a winning bidder for any reason, including, without limitation, technical problems or other system error or for any errors in an Email Notification.

#### **4.4**

**Winning Bids.** If your bid is deemed the winning bid at the end of an auction for Products, you agree, within 2 business days of the time the Email Notification is sent, to remit payment to B-Stock for such Products pursuant to the terms and instructions set forth in the Email Notification and this Agreement and to provide such information as requested in the Email Notification. If you fail to do so timely, you will forfeit any right to purchase such Products, and JCPENNEY may, in its sole discretion, choose to (i) contact the next highest bidder in the auction for such Products and offer to sell such Products to such bidder at such bidder's bid price, or (ii) post such Products on the Site for sale in a new auction. In addition, JCPENNEY may restrict you from bidding in any further auctions at the Site. Penalties for your failure to complete the purchase of Products that are the subject of your winning bid are as set forth below.

In the event that you do not pay for any winning bid, you may be given the chance to pay a reinstatement fee, in order to prevent the deactivation of your account. The fee amounts are as follows, within any 12-month period:

1st Offense: \$0-\$10,000 Purchase Price: \$100 Fee

1st Offense: \$10,000+ Purchase Price: \$500 Fee

2nd Offense: \$0-\$10,000 Purchase Price: \$500 Fee

2nd Offense: \$10,000+ Purchase Price: \$1,000 Fee

3rd Offense: \$1,000 Fee

**4.5 Deactivation; Cancellation.** JCPENNEY reserves the right, in its sole discretion at any time and for any reason, to deactivate your Site account, reject any offer to purchase Products or suspend or cancel any auction or purchase of Products, including fulfillment of a purchase after completion of an auction and payment for the Products. If JCPENNEY cancels any purchase of Products after you have submitted payment for such Products, JCPENNEY will direct B-Stock to issue a refund to the designated payment method that you used to make such payment or other method selected by JCPENNEY or B-Stock.

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

**5.1 Purchase Price.** In consideration for your payment to B-Stock, as collection agent of JCPENNEY, of the payment in full of the purchase price set by the winning bid for Products in an auction (the "Purchase Price"), shipping charges, and all applicable taxes, JCPENNEY hereby agrees to sell to you the Products for which you have posted the winning bid and complied with the terms set forth in the Email Notification and this Agreement. You agree to pay such amounts by wire to the B-Stock account set forth in the wiring instructions included in the Email Notification, and under the payment terms set forth in the Email Notification, this Agreement and the Listings on the Site. The instructions and other conditions set forth in the Email Notification that do not conflict with the terms of this Agreement will be deemed incorporated in this Agreement. Nothing in this Agreement shall otherwise obligate JCPENNEY to sell Products to you. You shall be responsible for all taxes, shipping costs and any other expenses incurred in connection with your purchase hereunder.

**5.2 Canceled Bids and Purchases.** Please note that there may be certain bids and purchases that JCPENNEY is unable to accept and must cancel. JCPENNEY reserves the right, at its sole discretion, to refuse or cancel any bid or purchase for any reason at any time. Some situations that may result in your bid or purchase being canceled include, without limitation, inaccuracies or errors in Products or bid information or credit or fraud issues identified by JCPENNEY or B-Stock. In the event that bids for Products are incorrectly listed or Products are listed with incorrect information due to an error in price, quantity, other product information, shipping or taxes, JCPENNEY may, in its sole discretion, refuse or cancel any purchases placed for such Products. In the event that JCPENNEY cancels your bid or purchase, you will be notified by email of such cancellation.

**5.3 Shipment.** JCPENNEY shall have no obligation to make available for pickup, any Products unless and until you have submitted an accurate and complete resale certificate in a form acceptable to JCPENNEY and JCPENNEY has received all amounts and information due from you for such Products.

**5.4 Revisions to Payment Terms.** JCPENNEY may revise the payment terms from time to time in its sole discretion upon notice to you on the Site or in an email; provided, however, that any change to payment terms will not be effective for any then-pending sale, but will only be effective for the next sale subsequent to such notice.

**5.5 Identification of JCPENNEY.** You shall not under any circumstances use any JCPENNEY literature or images or JCPENNEY's name or trademark either to promote your business or to promote the sale or resale of the Products purchased from JCPENNEY hereunder in any print media, store signage, flyers, radio, television, internet or other media (whether now known or unknown). You must ensure that any JCPenney brand identity is removed or obliterated from the Products before sale or resale; provided, however, that sewn in or heat-sealed labels may remain intact.

In the event that you resell Products to a third party, you shall include similar language in your resale agreement requiring that any such third party shall not use any JCPENNEY literature or images or JCPENNEY's name or trademark to promote the sale or resale of such Products.

**5.6 Inspection.** You shall have five (5) business days from the date of delivery of Inventory Products to inspect the shipment for any discrepancies in the quantity/quality delivered and report such discrepancy to JCPENNEY in writing. Buyer must provide a detailed manifest, identifying each item that is missing or damaged, and, if damaged, the exact nature of such damage, as well as any supporting images or other documentation. JCPENNEY reserves the right to conduct an additional inspection at its own expense. If JCPENNEY, acting reasonably and in good faith, agrees that an under delivery and/or damage has occurred greater than 5%, based on the listed retail value of the auction,

JCPENNEY will reimburse you in an amount equal to the approved discrepancy. By way of example, if Buyer wins an auction and pays a winning bid of \$1,000, and the shipment is missing an item that is 10% of the value of the auction, JCPENNEY will issue Buyer a reimbursement in the amount of \$100 (i.e., 10% of the of the listed retail value of the auction). Such reimbursement may be in the form of an offset against any amount you may owe to JCPENNEY or a credit to your B-Stock account. Following the five (5) business day inspection period, you shall no longer have the right to claim any reimbursement for under-delivery/damage.

## **6. Shipment of Products**

By bidding on the Site you are acknowledging that the the shipping carrier that will be delivering your purchases will be selected by JCPENNEY or its freight broker and that there are certain liability limits that will apply to shipping related losses. You will also have specific responsibilities to file claims in the event of shipping related losses, as described below:

**6.1** The carrier selected by the broker shall have the primary liability to Buyer with respect to damages for loss or damage of or to any shipment delivered to the Buyer pursuant to this Agreement. If the Carrier fails to pay Buyer its lawful cargo loss or damages, the freight broker will undertake responsibility for payment of any such claim for damages as contemplated by 49 U.S.C. § 14706, and shall have available to it all defenses available to a Carrier under that statute and case law construing that statute. B-Stock shall have no liability to Buyer with respect to the Inventory. In addition:

**6.1.1** Freight broker's responsibility shall not, under any circumstances, exceed the gross merchandise value, as determined through use of the winning bid amount for the applicable Inventory identified by B-Stock, or \$100,000, whichever is lower, per full truckload (FTL) shipment for actual loss or damage.

**6.1.2** The measurement of loss or damage for less than truckload (LTL) shipments shall be fifty cents (\$.50) per pound per package or \$10,000 per incident, whichever is lower.

**6.1.3** The measurement of loss or damage for less than truckload (LTL) shipments shall be fifty cents (\$.50) per pound per package or \$10,000 per incident, whichever is lower.

**6.1.4** By bidding on the Site you assume any additional liability in excess of the limits contained herein.

**6.2** Broker and/or the carrier shall not be liable for any loss, damage or delay caused by an act of God, the public enemy, the authority of law, the act or omission of the Buyer or owner, or due to the inherent vice of the goods shipped. The acceptance of responsibility by Broker for payment of claims, subject to the limitations set forth in Section (1) above, is expressly conditioned upon:

**6.2.1** The execution by Buyer of an assignment of all of its right, title and interest in and to any claim it may hold against the carrier to the broker, together with a warranty that it is the owner of all right, title and interest in and to any such claim, that it has not sold, assigned or otherwise alienated any such claim or received any payment thereon, and that the amount claimed is true accurate and correct. This is a condition precedent to any obligation of broker to pay Buyer on account of any cargo claim; and

**6.2.2** A warranty that Buyer agrees to cooperate fully with broker in the assertion and collection of any cargo claim, including but not limited to furnishing whatever documents and witnesses may be necessary, when and as necessary, to successfully prosecute a claim. The failure of Buyer to comply with this subpart shall be considered a critical, material breach of the terms of the assignment of any claim which shall require Buyer to immediately return to broker all sums that broker has paid to Buyer on account of such claim.

**6.3** Regardless of the mode of transportation, in all instances where a shipment is unable to be delivered due to an act or omission of Buyer, or if any shipment is refused for any reason by Buyer and is placed in a warehouse for storage, broker's liability for any claim for loss or damage shall cease to be that of a common carrier, and instead shall be that of a warehousemen, based on the industry "reasonable person and negligence" standard. Buyer agrees that broker's limitation of liability shall be as set forth by the selected warehouseman.

## **7. Resale of Products.**

Your sales of Products to third-party entities (each, a "subpurchaser") shall be subject to the following conditions: (i) your compliance with your obligations in this Agreement and with all applicable laws, rules, ordinances and regulations, including applicable export laws and regulations; and (ii) the subpurchaser has signed a written agreement with you agreeing to be bound by terms and obligations at least as strict as those listed in this Agreement, including the indemnity obligations and disclaimers inuring to the benefit of you and JCPENNEY, and the requirements of any other regulatory agency or governmental body having jurisdiction over such subpurchaser. Upon request by JCPENNEY, you shall provide to JCPENNEY a copy of any such agreement with a subpurchaser.

## **8. Changes in Terms.**

JCPENNEY shall have the right at any time and without prior notice, at its sole discretion, to revise this Agreement or to impose new terms and conditions with respect to access to or use of the Site. If we make material changes to these Terms of Purchase, we will notify you with, or by means of a notice on our Site. Such revisions and additions shall be effective immediately upon notice thereof, which may be given by any means, including but not limited to notification by an in-app message, by email or posting the revised or additional terms and conditions on the Site. The most current version of this Agreement will supersede all previous versions and can be reviewed by clicking on the "Terms of Purchase" located at the bottom of the pages of the Site. You agree that you shall be deemed to be apprised of and bound by any modification by JCPENNEY to this Agreement. ANY ACCESS OR USE OF THE SITE BY YOU AFTER NOTICE OF REVISIONS OR ADDITIONS TO THIS AGREEMENT SHALL CONSTITUTE AND BE DEEMED TO BE YOUR AGREEMENT TO SUCH REVISIONS OR ADDITIONS. No modification to this Agreement by any party other than JCPENNEY shall be valid or enforceable against JCPENNEY unless expressly agreed to by JCPENNEY in a writing signed by a duly authorized officer of JCPENNEY. You agree to keep your email address and other contact information current at all times.

## **9. Termination.**

This Agreement is effective until terminated by JCPENNEY. JCPENNEY may terminate this Agreement without notice and at any time. In the event of termination, you are no longer authorized to access the Site or bid on Products, and the restrictions imposed on you with respect to the Products you previously purchased and Content (as defined below) and other provisions that should survive termination, shall survive termination of each purchase transaction and this Agreement.

JCPENNEY shall also have the right without notice and at any time and for any or no reason to cease operation of the Site or any portion thereof, or any products or services offered through the Site, or to terminate any individual's right to access or use the Site or any portion thereof.

## **10. Compliance with Laws.**

You agree to comply with all applicable laws, statutes, ordinances and regulations regarding your use of the Site and the Products, including those applicable to the liquidation, sale, resale, handling, recall, storage, export, disposal or recycling of the Products and you shall be solely responsible for all expenses, if any, including any taxes and fees imposed on the sales transaction, related to the purchase and disposition of the Products. You agree to obtain and maintain any and all permits, licenses, bonds, certificates, and other similar approvals required in connection with this Agreement. You must be at least 18 years old to use the Site.

## **11. Errors; Content.**

The text, images, photographs, graphics, logos, illustrations, descriptions, data, and other information or material provided on the Site, as well as the selection, assembly and arrangement thereof, are referred to collectively as the "Content."

JCPENNEY does not guarantee that any Content, including price information and Product specifications, is accurate or complete. The Content, including auction Listings, may contain errors, omissions, or typographical errors or may be out of date. JCPENNEY may change, delete, or update any Content at any time and without prior notice. JCPENNEY reserves the right to suspend or revoke any Listing at any time and to correct any errors, inaccuracies or omissions (including after an auction has been completed).

The Content is provided for informational purposes only and is not binding on JCPENNEY in any way except to the extent it is specifically indicated in this Agreement to be so.

Unless otherwise noted, all Content is protected by copyrights, trademarks, service marks, and other proprietary rights that are owned by JCPENNEY or by third parties that have licensed their use to JCPENNEY. You may view the Content only for your personal information and, if you are a registered user of the Site, view the Content for purchase of Products on the Site, and for no other purpose, and you shall retain intact all copyright and other proprietary notices. Except as provided in the foregoing, neither JCPENNEY nor its suppliers grants to you or any person any right to use, reproduce, copy, modify, transmit, display, publish, sell, license, create derivative works, publicly perform, or distribute by any means, method, or process whatsoever, now known or hereafter developed, any of the Content on or transmitted through the Site, including

without limitation by transferring, downloading or otherwise copying any Content onto any disk drive or other storage medium. Any use of the Content, except as specifically permitted in this Agreement or as otherwise expressly permitted in the Content or in a writing signed by JCPENNEY, is strictly prohibited. You may not make use of any data mining, bots, spiders, automated tools or similar data gathering and extraction methods, directly or indirectly, on the Content or to collect any information from the Site or any other user of the Site.

## **12. Intellectual Property Rights.**

All content included on this Site are owned by JCPenney, our licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

You must not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store or transmit any of the material on this Site. You must not access or use for any commercial purposes any part of this Site or any services or materials available through this Site.

If you print, copy, modify, download or otherwise use or provide any other person or third party with access to any part of this Site in breach of this Agreement, your right to use this Site will cease immediately and you must, at our option, return or destroy any copies of the materials you have made. No right, title or interest in or to this Site or any content on this Site is transferred to you, and all rights not expressly granted are reserved by JCPenney. Any use of this Site not expressly permitted by this Agreement is a breach of this Agreement and may violate copyright, trademark and other laws.

## **13. Prohibited Uses.**

You may use this Site only for lawful purposes and in accordance with this Agreement. You agree not to use this Site:

**13.1** In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries).

**13.2** For the purpose of exploiting, harming or attempting to exploit or harm minors in any way by exposing them to inappropriate content, asking for personally identifiable information or otherwise.

**13.3** To send, knowingly receive, upload, download, use or re-use any material in conflict with this Agreement.

**13.4** To engage in any fraudulent activity.

**13.5** To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail", "chain letter" or "spam" or any other similar solicitation.

**13.6** To impersonate or attempt to impersonate JCPenney, a company employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).

**13.7** To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of this Site, or which, as determined by Us, may harm JCPenney or users of this Site or expose them to liability.

Additionally, you agree not to:

**13.1** Use this Site in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of this Site, including their ability to engage in real time activities through this Site.

**13.2** Use any robot, spider or other automatic device, process or means to access this Site for any purpose, including monitoring or copying any of the material on this Site.

**13.3** Use any manual process to monitor or copy any of the material on this Site or for any other unauthorized purpose without our prior written consent.

**13.4** Use any device, software or routine that interferes with the proper working of this Site.

**13.5** Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.

**13.6** Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of this Site, the server on which this Site is stored, or any server, computer or database connected to this Site.

**13.7** Attack this Site via a denial-of-service attack or a distributed denial-of-service attack.

**13.8** Otherwise attempt to interfere with the proper working of this Site.

#### **14. Monitoring and Enforcement.**

We have the right to (i) take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of this Site and (ii) terminate or suspend your access to all or part of this Site for any or no reason, including without limitation, any violation of this Agreement. Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone conducting illegal or unauthorized use of this Site. TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, YOU WAIVE AND HOLD HARMLESS JCPENNEY AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

#### **15. Third Party Links.**

The Site may contain links and interactive functionality interacting with the Sites of third parties, including social sites, product manufacturers' sites, advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party Sites linked to this Site, you do so entirely at your own risk and subject to the terms and conditions of use for such Sites. Before enabling any sharing functions of this Site to communicate with any such Site or otherwise visiting any such Site, we strongly recommend that you review and understand the terms and conditions, privacy policies, settings and information-sharing functions of each such third-party Site. The links and interactive functionality for third-party sites on this Site do not constitute an endorsement by us of such third-party sites. Other sites may link to this Site with or without our authorization, and we may block any links to or from this Site. YOUR USE OF THIRD-PARTY SITES AND RESOURCES IS AT YOUR OWN RISK.

#### **16. Prices.**

Prices displayed on the Site are in U.S. dollars. JCPENNEY reserves the right without prior notice to discontinue or change specifications and prices on Products that may be offered on the Site without incurring any obligation to you. Descriptions of, or references to, Products on the Site do not imply endorsement of that Product, or constitute a warranty, by JCPENNEY or its suppliers.

In the event that a Product is listed at an incorrect price, JCPENNEY shall have the right to refuse or cancel orders placed for the Product listed at the incorrect price.

#### **17. Use of Your Information.**

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 enter into an agreement with JCPENNEY to purchase the Inventory and B-Stock will share only that information with JCPENNEY required for JCPENNEY to fulfill your order. JCPENNEY 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 with respect to B-Stock's collection, use and disclosure of your information and, if you or B-Stock provides any such information to JCPENNEY, you also agree to JCPENNEY's Privacy Policy with respect to the collection, use and disclosure of such information.

#### **18. Warranty Disclaimers; Limitation of Liability.**

TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THIS SITE OR ANY PRODUCTS OBTAINED THROUGH THIS SITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY SITE LINKED TO IT.

YOUR USE OF THIS SITE, ITS CONTENT AND ANY PRODUCTS OBTAINED THROUGH THIS SITE IS AT YOUR OWN RISK. THIS SITE, ITS CONTENT AND ANY PRODUCTS OBTAINED THROUGH THIS SITE ARE PROVIDED ON AN "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER JCPENNEY NOR ANY PERSON ASSOCIATED WITH JCPENNEY MAKES ANY

WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THIS SITE. WITHOUT LIMITING THE FOREGOING, NEITHER JCPENNEY NOR ANYONE ASSOCIATED WITH JCPENNEY REPRESENTS OR WARRANTS THAT THIS SITE, ITS CONTENT OR ANY PRODUCTS OBTAINED THROUGH THIS SITE WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THIS SITE OR ANY PRODUCTS OBTAINED THROUGH THIS SITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

JCPENNEY HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, JCPENNEY, ITS AFFILIATES AND THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS, WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THIS SITE, ANY SITES LINKED TO IT, ANY CONTENT ON THIS SITE OR SUCH OTHER SITES OR ANY PRODUCTS OBTAINED THROUGH THIS SITE OR SUCH OTHER SITES, EVEN IF SUCH DAMAGES WERE FORESEEABLE.

SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THESE WARRANTY LIMITATIONS MAY NOT APPLY TO YOU.

#### **19. Indemnification.**

You agree to defend, indemnify, and hold harmless JCPENNEY, and each of our affiliates, licensors, and service providers, and their respective affiliates and related entities and their respective directors, officers, employees, and agents from and against all claims, liabilities, losses, damages, judgments, awards, liabilities, costs, expenses and fees (including but not limited to reasonable attorneys' fees and court costs), arising out of or relating to (i) your breach of this Agreement, (ii) your access to or use of the Site, (iii) your purchase, use, resale, handling, storage, disposal or recycling of the Products, including any recall of the Products, (iv) any infringement or misappropriation of any proprietary right by you, or (v) your negligence or intentional misconduct. The foregoing indemnification obligation shall survive each purchase transaction and termination of this Agreement.

#### **20. Force Majeure**

JCPENNEY and its suppliers shall not be liable for any nonperformance or delay in performance caused by any act beyond its reasonable control, including but not limited to acts or omissions of third parties, unavailability of supplies, equipment failure, war, strikes, lock-outs, fire, flood, or any other Act of God, any law, regulation, ordinance, or other act or order of any court, government, or governmental agency, or delays, unavailability, errors, or other failures of the Internet or other data networks.

#### **21. Governing Law.**

All matters relating to this Site and this Agreement and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction).

#### **22. Arbitration.**

**Any dispute or claim arising out of or relating in any way to your use of this Site, to any purchases made through this Site, or to the sale of any products or services sold or distributed by JCPenney on this Site, will be resolved by binding arbitration, rather than in court,** except that you may assert claims in small claims court if your claims qualify. In addition, each party retains the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights. The Federal Arbitration Act and federal arbitration law apply to this agreement to arbitrate.

**There is no judge or jury in arbitration and court review of an arbitration award is very limited.** The scope of discovery is more limited in arbitration than in court. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to JCPENNEY's Registered Agent/Legal Department, located at 6501 Legacy Drive, Plano, Texas 75024. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Consumer Arbitration Rules. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The AAA's rules are available at [www.adr.org](http://www.adr.org). Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse all such filing, administration and arbitrator fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, JCPENNEY will not seek attorneys' fees and costs in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the county where you live or at another mutually agreed location.

**We each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action. We each hereby waive our right to participate in any class action, whether in court or arbitration. If for any reason a claim proceeds in court rather than in arbitration we each waive any right to a jury trial.**

#### **23. Waiver and Severability.**

No waiver by JCPENNEY of any term or condition set forth in this Agreement shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of JCPENNEY to assert a right or provision under this Agreement shall not constitute a waiver of such right or provision. If any provision of these this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the this Agreement will continue in full force and effect.

#### **24. Entire Agreement.**

This Agreement, including our Privacy Policy constitute the sole and entire agreement between you and J.C. Penney Corporation, Inc., and its affiliates, with respect to this Site and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to this Site.