

## Wayfair Liquidation Auctions Terms of Purchase

Last Updated: November 25, 2019

### 1. Acceptance of Terms of Purchase

**1.1** Acceptance of Terms. These Terms of Purchase are an ongoing contract between you and Wayfair, LLC. ("Wayfair" or "we") and apply to your use of Wayfair's online marketplace located at [<http://wayfair.bstockolutions.com>] (the "Site"), hosted and configured by B-Stock Solutions, Inc. ("BStock"), through which you may purchase Inventory Products from Wayfair 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 unless signed by an authorized Wayfair representative. 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 Wayfair 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 Wayfair 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 Wayfair account specified in the Email Notification.

**2.3** "Extended Auction" shall mean an auction where if a bid is entered within the final 10 minutes of the original [closing time], the auction will be extended by 3 minutes. If a bid is then placed before the extended 3 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 Wayfair'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. Wayfair 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 Wayfair 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 items that may or may not have been previously sold. The condition of the Inventory Products will vary. Wayfair does not warrant that the Listings are accurate, complete, reliable, current or error-free. The quantity 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%) more damaged items than designated as "Damaged" in the Listing. Accessories such as remote controls, cables, and instructions may or may not be included.

**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. 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. Wayfair 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 Wayfair, you shall forfeit any right to purchase such Inventory Products and Wayfair 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. In the event that you do not pay for any given 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. Conditions to Sale; Payment**

**4.1 Purchase Price.** In consideration for your payment of the purchase price set by the winning bid for certain Inventory Products in an Auction (the "Purchase Price") and all applicable taxes, Wayfair 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 and all applicable taxes for the Inventory Products by wiring the full amount of the Purchase Price and such taxes to the bank account set forth in the wiring instructions included in the listing descriptions and winning bid Email Notifications, within 48 business hours of end of Auction. Your failure to pay the Purchase Price and all applicable taxes means that the winning bid will be forfeited and Wayfair has the right to relist the auction or sell to 2nd highest bidder in its sole discretion. Nothing in these Terms of Purchase shall otherwise obligate Wayfair to sell Inventory Products to you. You shall be responsible for all taxes, shipping and handling 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, Wayfair may cancel your bid or purchase if there are inaccuracies or errors in product or bid information. While Wayfair 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 Wayfair under the payment terms set forth in the Email Notification and on the Site. Wayfair 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 the next sale subsequent to such notice. Upon acceptance of such Purchase Price and the fulfillment of any other conditions to such sale described herein, Wayfair will sell, assign, transfer and convey to you all of Wayfair's right, title and interests in and to the Inventory Products and shall make such Inventory Products available for removal by you or your agents in the manner set forth in Section 5 below.

**4.4 Other Conditions.** Wayfair shall not be obligated to complete any sale or transfer any Inventory Products to you unless and until you have submitted to Wayfair all information requested by Wayfair, including an accurate, valid and complete re-sale certificate in a form acceptable to Wayfair.

**4.5 Identification of Wayfair.** 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 Wayfair's specifications, either (a) to remove, if possible, all of the identifying marks, including, but not limited to, Wayfair'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, [or] (b) to clearly and conspicuously mark the packaging so that it is readily apparent and obvious that the Inventory Products have been through a salvage process. Although you should not have access to any Wayfair 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 Wayfair, 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 Wayfair, its parent or any of its divisions or affiliates, including but not limited to Wayfair, or any of its or their private labels, in any manner; (iii) make reference to Wayfair 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 Wayfair's suppliers. Affiliates include, but are not limited to, AllModern, Joss and Main, Dwell Studio and Wayfair Supply.

## 5. Removal and Acceptance of Inventory products

### 5.1

Removal and Shipment of Inventory Products. The Inventory Products purchased by you will be delivered to you by Wayfair for a pre-determined price, but may be made available to you for receipt at the Wayfair facility identified in the Email Notification (the "Inventory Location") at a time mutually agreed to by you and Wayfair (the "Pickup Time")

If the products are shipped to you directly by Wayfair:

Wayfair will arrange for shipment of the Inventory Products within 1-5 business days of confirmed payment. Once the pickup has been scheduled we will not allow any changes to the scheduled time or delivery address. If you fail to remove such Inventory Products within this time, Wayfair, 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 Wayfair less (i) a storage charge of \$10 per pallet per each of the days Wayfair 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. You will be notified by email when the load has been scheduled and items must be delivered within 2 business days from that update. No custom delivery requests or appointments can be accommodated. You will be notified by email with a carrier and tracking number when one is available. Inventory Products will be shipped to the address on your account at the time of the auction closing, no address changes will be accommodated after payment has been received. **Violation of this can result in removal from the marketplace.** If Inventory Products are to be shipped to a different address you must notify Wayfair and B-Stock within 24 hours of the end of the auction. You shall remove all Inventory Products from the Inventory Location within one to two (1-2) business days of receiving notice from Wayfair that the Inventory Products are ready for pick-up.

**5.2 Title; Risk of Loss.** Title to the Inventory Products shall remain with Wayfair until you take possession of the Inventory Products.. 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.. You or your agent shall have the right to count the number of pallets containing the Inventory Products to confirm the quantity of pallets matches the shipping manifest prior to accepting possession. All shortages and/or damage along with any other such notations regarding delivery should be noted on the delivery receipt. Taking pictures of damage will also be beneficial. 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.

**5.3 Acceptance.** Your acceptance of possession of the Inventory Products from Wayfair 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 except as set forth in Section 5.4. All sales are final.

**5.4 Inspection.** You shall have five (5) business days from the date of delivery of Inventory Products in accordance with Section 5.1 to inspect the shipment for any discrepancies in the quantity/quality delivered and report such discrepancy to Wayfair 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. Wayfair reserves the right to conduct an additional inspection at its own expense. If Wayfair, 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, Wayfair 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, Wayfair will issue Buyer a reimbursement in the amount of \$100 (i.e., 10% of the winning bid amount of the auction). Such reimbursement may be in the form of an offset against any amount you may owe to Wayfair 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.

**5.5 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.

**5.6** The value of the Inventory Products is determined by the winning bid price of an auction, however since the working condition of said Inventory Products is not and cannot be conclusively shown to the Transportation Provider, you hereby release and hold the Transportation Provider harmless for loss or damage of the Inventory Products while in its or a third party carrier's care, custody or control except that in the event of a complete loss of the shipment or that additional damage caused by Transportation provider or a third party carrier can be proven, Transportation Provider's liability for any such loss shall be limited to no more than \$100,000 per occurrence, whether such shipment is transported on one or more trailers. Should the value of the Inventory Products exceed \$100,000, you are responsible for insuring the excess value.

## **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 Wayfair. Each party shall take every reasonable precaution to protect the confidentiality of such information. 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 Wayfair'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. Representations and Warranties; Indemnity**

**7.1** You shall indemnify and hold Wayfair and BStock and their respective subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim, demand, action, losses and/or costs, including reasonable attorneys' fees, due to or arising out of (i) your use of the Site or (ii) any sale, use or handling of the Inventory Products.

**7.2** The indemnity obligation under this Section 7 shall survive each purchase transaction hereunder.

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

EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE INVENTORY PRODUCTS ARE PROVIDED BY WAYFAIR TO YOU "AS IS" AND "WHERE IS" AND WAYFAIR 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. EXCEPT FOR THE INDEMNITY OBLIGATIONS SET FORTH IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE FOR ANY 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. IN NO EVENT SHALL WAYFAIR'S LIABILITY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THESE TERMS OF PURCHASE, EXCEED THE PURCHASE PRICE PAID BY YOU TO WAYFAIR FOR THE INVENTORY PRODUCTS AT ISSUE. WAYFAIR SHALL NOT BE HELD LIABLE FOR ANY ERROR IN A LISTING THAT WAYFAIR CORRECTS PRIOR TO THE PURCHASE OF THE INVENTORY PRODUCTS TO WHICH THAT LISTING APPLIES. THIS LIMITATION OF LIABILITY SHALL SURVIVE EACH PURCHASE TRANSACTION.

## 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 Wayfair 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, Wayfair may immediately terminate your account, deactivate your password and seek any other remedy available to Wayfair or its affiliates.

## 11. General Provisions

**11.1** These Terms of Purchase will be governed by the laws of the state of Massachusetts, without reference to its choice of law rules. Exclusive venue and jurisdiction for any action or proceeding under this Agreement shall be in Boston, Massachusetts, and you hereby consent to such venue and jurisdiction. No waiver of 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.

**11.2** Force Majeure. Wayfair 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 Wayfair's reasonable control, whether or not of the kind specifically enumerated above.

**11.3** The Terms of Purchase was last updated on **October 20, 2019**. Please check our Terms of Purchase periodically for changes.