

## **Best Buy Terms of Purchase**

**Last Updated: January 21, 2021**

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

### **1. Acceptance of Terms of Purchase**

**1.1** Acceptance of Terms. These Terms of Purchase are an ongoing contract between you and Best Buy Stores, L.P. ("Best Buy" or "we") and apply to your use of Best Buy's online marketplace located at <http://BestBuy.bstock.com> (the "Site"), hosted and configured by B-Stock Solutions, LLC ("B-Stock"), through which you may purchase Inventory Products from Best Buy 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. 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 and each time you place a bid on and/or purchase Inventory Products from the Site. If you do not agree to these Terms of Purchase, you should not use and 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** "Content" shall mean any and all information, service or content provided by Best Buy in any medium in connection with these Terms of Purchase, including promotional content and Listings to be displayed on the Site.

**2.2** A "Completed Purchase" occurs when (a) you have provided to Best Buy all of the purchase information requested in the Email Notification (defined in Section 3.2 below) in the manner specified in such Email Notification to complete your purchase and (b) the Purchase Price for the Inventory Products has been received in the Best Buy 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 Best Buy'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. Best Buy shall have the right to modify 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** "You" or "your" shall mean the individual business that purchases Inventory Products from Best Buy through the Site under the terms described herein.

### **3. Auction Process**

**3.1** Inventory Products. The condition of the Inventory Products will vary and standard designations regarding a product's condition will be set forth in the Listing. The conditions of the Inventory Products are described in the Listing to best of Best Buy's ability; however, Best Buy does not warrant that Listings are complete, accurate, reliable, current, or error-free. The Inventory Products are provided to you "as is" for purchase on the Site. Best Buy will have no liability if an Inventory Product quantity shortfall is less than or equal to 5% of the total Listing quantity. If an under delivery has

occurred such that the quantity shortfall is greater than 5% of the Listing quantity (and provided you comply with the inspection and notification requirements set forth below), Best Buy will reimburse you for the price paid as a percentage of the amount paid by you for the relevant shortfall. 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 (“Auction”). If you wish to bid on Inventory Products, you will be required to enter your bid amount. Your bid must be (a) in an amount higher than the bid listed as the minimum opening bid and the “current winning bid,” as applicable, (b) 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 your bid to be eligible for the Auction. The submission of a bid constitutes an irrevocable offer to purchase the inventory product(s) on which you bid at the purchase price submitted, which Best Buy may accept or reject in Best Buy’s sole discretion, on the terms and conditions of the listing and in accordance with the terms and conditions of these terms of purchase. 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. Best Buy 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 “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.

**3.4 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 48 hours of when the Email Notification is sent by Best Buy, you shall forfeit any right to purchase such Inventory Products and Best Buy may deactivate your account and password so you can no longer access the Site and, at its sole discretion, may choose to (a) contact another 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 (b) 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.

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 Fee: \$100

2nd Offense Fee: \$500

3rd Offense: Deactivation of account

**3.5 Deactivation; Cancellation.** Best Buy reserves the right, in its sole discretion at any time and for any reason, to deactivate your Site account, reject any offer to purchase Inventory Products or suspend or cancel any Listing, Auction, or purchase of Inventory Products, including fulfillment of a purchase after completion of an Auction and payment for the Inventory Products. If Best Buy cancels any purchase of Inventory Products after you have submitted payment for such Inventory Products, Best Buy 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 Best Buy or B-Stock.

#### **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”), Best Buy 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 these 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 48 hours after the end of the applicable Auction. Your failure to pay the Purchase Price means that the winning bid may be forfeited and Best Buy has the right to relist the auction or sell to another bidder in its sole discretion. Nothing in these Terms of

Purchase shall otherwise obligate Best Buy to sell Inventory Products to you. You shall be responsible for all shipping costs and any other fees or expenses incurred in connection with your purchase hereunder.

**4.2 Canceled Bids and Purchases.** 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, Best Buy 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 Best Buy 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. Best Buy may choose not to award Inventory Products to you for any reason, including but not limited to Best Buy's concerns with your ability to comply with law or otherwise meet the terms and conditions of these Terms of Purchase.

**4.3 Payment Terms.** You shall submit the Purchase Price to Best Buy under the payment terms set forth in the Email Notification and on the Site. Best Buy 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, Best Buy will sell, assign, transfer and convey to you all of Best Buy's right, title and interest 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.

**4.4 Removal of Identification Information.** Prior to the transfer, disposal, refurbishing, recycling, sale or any other disposition of the Inventory Products, you agree: (a) to remove from the Inventory Products and properly dispose of all Best Buy identification marks including, but not limited to, labels, trademarks, trade names, service marks, SKU numbers and bar codes, other than those identification marks contained on the original packaging that are required by law ("Identification Marks"); (b) to remove from the Inventory Products and properly dispose of all customer information including, but not limited to, sales receipts, addresses, phone numbers, and credit card numbers ("Customer Information"); and (c) to comply with the requirements of the attached and incorporated Exhibit A. You agree to comply with all state, federal and local rules and regulations with respect to the disposal of the Identification Marks, the Customer Information, and the deleted files and other information, including, but not limited to, laws relating to privacy. You acknowledge that monetary damages may not alone be a sufficient remedy for failure to comply with the requirements of this Section 4.4 and that Best Buy shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Further, you acknowledge and agree that if there is a breach or threatened breach of the provisions regarding sanitization herein, Best Buy will be irrevocably harmed and entitled to seek a temporary restraining order, injunction, and/or other equitable relief against the commencement or continuance of such breach without the requirement of posting a bond or proving injury as a condition of relief. In addition, in the event that your performance of obligations under this Section 4.4 results in the creation of any waste or other material, your handling of that waste or material shall be subject to the requirements of the indemnification provisions of these Terms of Purchase.

**4.5** You must sanitize all purchased Inventory Products as required by Exhibit A hereof, attached and incorporated herein, in order to get the Inventory Products into re-saleable condition. Inventory Product purchased hereunder and sanitized by you may only be re-sold by you if the product passes the sanitization standards set forth in Exhibit A. For those Inventory Products which you are not able to sanitize per Exhibit A, you shall destroy those Inventory Products in accordance with the provisions set forth in these Terms of Purchase and in accordance with all applicable laws, rules, regulations and standards (including environmental) at no additional cost to Best Buy.

**4.6 Taxes.** You will pay Best Buy or the applicable governmental entity any applicable value added, sales or use taxes or like taxes that are owed by you solely as a result of entering into these Terms of Purchase or which Best Buy is permitted to collect from you under applicable law. You will provide a valid exemption certificate. Best Buy is not liable for any of the taxes that you are legally obligated to pay as a result of your distribution or resale of Inventory Product purchased under these Terms of Purchase. All such taxes (including without limitation, income taxes, withholding taxes, value added, franchise, gross receipt, sales, use, property or similar taxes, duties, levies, fees, excises or tariffs incurred in connection with or related to the distribution of the Inventory Products) will be your financial responsibility. You understand and acknowledge that you will be solely responsible for all taxes, your and your employees' wages, benefits, unemployment compensation and workers' compensation and all other costs and expenses relating to your employees and applicable to the performance of these Terms of Purchase, whether imposed now or at a later date. If Best Buy is audited by a taxing authority or other governmental entity with respect to a tax matter arising from these

Terms of Purchase, you agree to reasonably cooperate with Best Buy in order to respond to such audit inquiries in an appropriate and timely manner, so that the audit and any resulting controversy may be resolved expeditiously. Notwithstanding anything herein to the contrary, you additionally agree to retain such sales tax records as may reasonably be requested by the taxing authority, and to provide access to such sales tax records to Best Buy in the event of such a request, for the applicable statute of limitations, and upon notice from Best Buy that such statute has been extended, for any extensions thereof.

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

**5.1** Removal and Shipment of Inventory Products. Depending on the Best Buy location of the Inventory Products purchased by you, either of the following shall occur:

**5.1.1** If the shipping costs are not included in the Purchase Price (as indicated in your Email Notification), the Inventory Products purchased by you shall be made available to you for pickup at the Best Buy facility identified in the Email Notification (the "Inventory Location"). You or your agent must schedule a pickup time (the "Pickup Time") by contacting Best Buy pursuant to the instructions set forth in the Email Notification. The Pickup Time must occur within 3 business days after notice to you from Best Buy that the Inventory Products are ready for pickup. You are solely responsible for removal of the Inventory Products from the Inventory Location and for all shipping arrangements including, without limitation, permits, costs and licenses, expenses (including, but not limited to, insurance), risk of loss in transit, and labor. Your employees, equipment, and property, and that of your agents, enter and remain at the Inventory Location entirely at your risk. While at the Inventory Location, your employees and agents must observe all of Best Buy's policies, rules and regulations. You shall remove all Inventory Products from the Inventory Location within three (3) business days of Best Buy's notice to you that the Inventory Products are ready for pick-up. If you fail to remove such Inventory Products within three days, Best Buy, in its sole discretion, may choose to (a) keep such Inventory Products, list them for auction on the Site and sell them to another bidder and refund to you the Purchase Price you paid to Best Buy less (i) a storage charge of \$500 per day for each day that Best Buy held the Inventory Products for you after you registered a Completed Purchase, and (ii) a restocking fee of up to twenty percent (20%) of the Purchase Price, and in which case you shall not have any right, title or interest in or to the Inventory Products; or (b) complete the sale with you at a Purchase Price equal to the original Purchase Price plus the storage charges and restocking fee set forth in the foregoing subsections (a) and (b).

**5.1.2** If the shipping costs are included in the Purchase Price (as indicated in your Email Notification), Inventory Products will be transported to you by the means selected by the transportation provider ("Transportation Provider") designated in your Email Notifications. The Transportation Provider may provide services either as a motor carrier with its asset or as a broker with third party carriers. You agree to work with the designated Transportation Provider to schedule the delivery of the Inventory Products to your chosen location, and you acknowledge that such Transportation Provider is acting on your behalf in connection with the shipment. You must schedule shipment within 48 hours of Best Buy's receipt of your payment for the Inventory Products. The designated Transportation Provider may impose additional terms and conditions on the transportation of the Inventory Products. Any of your designated agents who enter and remain at the Inventory Location do so entirely at your risk as to any and all hazards. While at the Inventory Location your agents must observe all of Best Buy's policies, rules and regulations. Risk of loss for the Inventory Products passes to you upon handling or pick up of the Inventory Products by you or the Transportation Provider.

If you refuse receipt of Inventory Products or refuse to schedule shipment with the designated Transportation Provider, Best Buy, in its sole discretion, may choose to (a) keep such Inventory Products, list them for auction on the Site and sell them to another bidder, and refund to you the Purchase Price you paid to Best Buy less (i) a storage charge of \$500 per day for each day that Best Buy held the Inventory Products for you after you registered a Completed Purchase and (ii) a restocking fee of up to twenty percent (20%) of the Purchase Price and in which case you shall not have any right, title or interest in or to the Inventory Products; or (b) complete the sale with you at a Purchase Price equal to the original Purchase Price plus storage charges and restocking fee set forth in the foregoing subsections (a) and (b).

**5.2** Title; Risk of Loss. Title to the Inventory Products shall remain with Best Buy until you, the Transportation Provider or your agent takes possession of the Inventory Products at the Inventory Location. Delivery shall be 'Ex Works - Point of Purchase', as defined in the Incoterms 2010 published by the ICC. You shall pay all freight charges either directly or as a part of the Purchase Price, as applicable. You expressly acknowledge that risk of loss and liability for the Inventory Products shall pass to you upon your, your agent's, or the Transportation Provider's receipt of the Inventory

Products at the Inventory Location, and after such time, you shall release Best Buy of any fault, and shall forfeit any rights to claims against Best Buy associated with the Inventory Products or the receipt of the Inventory Products purchased by you. You further release B-Stock of any liability and waive all claims against B-Stock with respect to such Inventory Products. 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 for refund, exchange, or otherwise.

**5.3 Acceptance.** Your acceptance of possession of the Inventory Products from Best Buy 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. No returns or refunds are allowed.

**5.4 Inspection.** You shall have two (2) 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 delivered and report such discrepancy to B-Stock in writing. You must provide a detailed manifest, labeling each item that is missing, as well as any supporting documentation. Best Buy reserves the right to conduct an additional inspection at its own expense. If Best Buy in its sole discretion agrees that an under delivery has occurred pursuant to which Section 3.1, above, is applicable, Best Buy will reimburse you for any acknowledged under delivery in accordance with Section 3.1, above. Such reimbursement may be in the form of an offset against any payments you may owe to Best Buy, at Best Buy's discretion. Following such inspection period, you shall no longer have the right to claim any reimbursement for under delivery.

**5.5** 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** You shall not use or disclose to any individual or entity, including but not limited to any transferee or subsequent purchaser of the Inventory Products, the following: (a) that you purchased or received the Inventory Products from the Site and any information regarding the Purchase Price of any purchased Inventory Products and any particular sale; (b) the nature or result of any business relationship with Best Buy, including these Terms of Purchase; (c) any of the Identification Marks; (d) any Customer Information; (e) any files or information stored within any of the Inventory Products that are computers or other consumer electronics containing memory or other storage; and (f) other information of a nature not generally disclosed by Best Buy to the public. For the avoidance of doubt, this Section 6 shall survive the termination or expiration of this Agreement.

## **7. Environmental Representations and Warranties**

You represent and warrant to Best Buy that:

**7.1** Prior to disposal, incineration, or recycling of any Inventory Product or component(s) thereof, you will complete a hazardous waste determination in accordance with 40 C.F.R. § 262.11 and applicable state, provincial or local laws, rules, or regulations of all relevant jurisdictions relating to disposal or recycling of the Inventory Product or component(s) thereof. In the event that an Inventory Product is classified under any such law, rule or requirement as a hazardous waste, and you undertake to recycle or arrange for the recycling of that Inventory Product, and if the recycling of that Inventory Product is potentially subject to the provisions of 42 U.S.C. § 9627, then you will comply with all requirements of 42 U.S.C. § 9627 necessary to qualify for the liability exemptions provided in that statutory provision.

**7.2** You currently comply, and will continue to comply, with all federal, state, provincial and local laws, rules, and regulations of all relevant jurisdictions, governing the disposal, incineration, or recycling of Inventory Products or components thereof.

**7.3** You have not been convicted of, or received a citation for, a violation of any federal, state, provincial or local law, rule, or regulation of any relevant jurisdiction governing the disposal, incineration, or recycling of waste.

For the purposes of these representations and warranties, the terms "disposal", "incineration", and "recycling" shall have the same meaning as defined in Section 8 entitled Environmental Indemnification.

## **8. Environmental Indemnification**

All determinations regarding the status and handling of Inventory Products after title has passed to you in accordance with these Terms of Purchase shall be the responsibility of, and made by, you. You agree to indemnify, defend, and hold Best Buy harmless from and against any losses, attorneys' fees, costs, liabilities, damages, penalties, third party claims, demands, actions, or causes of action arising out of, or in connection with, your disposal, incineration, or recycling of the Inventory Products or components thereof, including, but not limited to, losses, attorneys' fees, costs, liabilities, damages, penalties, claims, demands, actions, or causes of action arising under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. (as amended) (CERCLA); arising under Solid Waste Disposal Act (SWDA) (as amended); arising under any federal or state rule or regulation promulgated or approved pursuant to CERCLA or the Resources Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. (RCRA); and/or arising under applicable federal, state, provincial or local laws, rules, or regulations of any jurisdiction relating to the disposal, incineration, stewardship or recycling of Inventory Products and components thereof. For the purposes of this indemnification, "disposal," "incineration", and "recycling" shall have the meanings set forth in the statute or regulation under which an indemnification obligation under this paragraph arises or is alleged to arise.

## **9. Indemnification**

In addition to your other indemnification obligations set forth in these Terms of Purchase or otherwise allowed by law, you shall further indemnify, defend and hold Best Buy (including its parent and affiliates and their respective officers, directors, employees, contractors, and agents) harmless from and against any and all claims, demands, causes of action, actions, costs, liabilities, and expenses, of any nature, (including, but not limited to court costs, costs of investigation, and attorneys' fees) arising out of or in connection with any actual or alleged: (a) loss, theft or destruction, whether partial or whole, of the Inventory Products and other items in the possession or control of you or your agents; (b) the reconditioning, refurbishing, resale, sale, handling, use, recycling, transfer, disposal, destruction, or repackaging of the Inventory Products and other items provided under these Terms of Purchase; (c) the labeling, advertising and/or notices placed on the packaging or elsewhere or the lack of notices which should have been placed on the packaging; (d) inaccurate descriptions of the contents of the Inventory Products and the package; (e) breach of these Terms of Purchase (including but not limited to warranties and representations) by you or your officers, directors, employees, agents or representatives; (f) failure to delete and remove all information or items contained in or on the Inventory Products and other items tendered to the freight carrier or sold under these Terms of Purchase to you, including but not limited to claims arising from the failure to comply with requirements described in Exhibit A; (g) the acts or omissions of you or your officers, directors, employees, agents or representatives; (h) your disposal of the Identification Marks, Customer Information, the hard drive of any computer, deleted files and other information; (i) your dispute with another user of the Site; (j) Best Buy's use or publication of data or information provided by you; (k) violation of any law, rule, regulation or authority by you or your officers, directors, employees, agents or representatives; (l) your use of the Site; and (m) any infringement or misappropriation of any proprietary rights by you.

## **10. Inspection/Audit**

You agree to permit Best Buy, its parent, subsidiaries or affiliated entities, and its agents (including third parties) the right to visit your warehouse, facility, or place of business at any time in order to monitor compliance with these Terms of Purchase, including but not limited to an unannounced audit of your sanitization processes and inspection of products. Best Buy, its parent, subsidiaries or affiliated entities, or its designated agents, shall have the right to audit your books and records related to these Terms of Purchase, evaluate the Inventory Products to ensure they are sanitized as required by Exhibit A, and inspect your facilities and procedures at any time to assure compliance with these Terms of Purchase. You agree to provide Best Buy's designated audit and inspection team with access to the relevant records, facilities, and procedures. Best Buy will pay the cost of any such audit and inspection unless the audit reveals that you are not performing in compliance with these Terms of Purchase, then, in addition to any other legal and equitable remedies available to Best Buy, you will reimburse Best Buy for the costs of the audit and inspection. In addition, if the inspection and audit reveals a condition that is unsatisfactory to Best Buy in its reasonable business judgment, you will bear the costs for any re-inspection and re-audit if desired by Best Buy. The rights set forth in this Section 10 shall survive for a period of three (3) years following the termination or expiration of these Terms of Purchase.

## **11. Warranty Disclaimer**

THE INVENTORY PRODUCTS ARE PROVIDED BY BEST BUY TO AND PURCHASED BY YOU ON AN "AS IS" AND "WITH ALL FAULTS" BASIS. BEST BUY UNDERTAKES NO RESPONSIBILITY FOR THE QUALITY OF THE INVENTORY PRODUCTS. BEST BUY 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. You hereby acknowledge that you used your own standards to determine the quality and value of the Inventory Products. You acknowledge that the Inventory Products may be damaged, defective, or otherwise lacking in merchantability and may not be fit for their usual, otherwise-intended purpose. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

## **12. Limitation of Liability**

YOU ACKNOWLEDGE, BY YOUR USE OF THE SITE, THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. THE ENTIRE RISK ARISING OUT OF ANY PRODUCTS OR SERVICES OFFERED ON OR IN CONNECTION WITH THE SITE, AND ANY CONTENT, CONTENT PROVIDED BY YOU OR DIGITAL DOWNLOADS REMAINS WITH YOU. IN NO EVENT SHALL BEST BUY OR ITS AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THESE TERMS OF PURCHASE OR THE USE OF OR INABILITY TO USE ANY PRODUCTS, SERVICES, CONTENT, USER CONTENT AND/OR DIGITAL DOWNLOADS, THE PROVISION OF OR FAILURE TO PROVIDE PRODUCTS OR SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES, USER CONTENT AND CONTENT OBTAINED THROUGH THE SITE WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. NOTWITHSTANDING ANYTHING ELSE IN THESE TERMS OF PURCHASE OR POSTED ON THE SITE, THE MAXIMUM LIABILITY THAT BEST BUY SHALL HAVE IS LIMITED TO ANY AMOUNTS ACTUALLY PAID TO BEST BUY BY YOU FOR THE PURCHASE PRICE OF THE PARTICULAR INVENTORY PRODUCT(S) AT ISSUE, WHICH FOR CLARIFICATION WILL NOT EQUAL THE AMOUNT OF THE PAYMENT FOR THE ENTIRE LISTING. YOU ASSUME ALL RISK OF LOSS FOR SHIPPED INVENTORY PRODUCT(S). USER INFORMATION SUCH AS ADDRESS THAT IS INACCURATE OR INCOMPLETE MAY RESULT IN DELAYS THAT SHALL NOT BE THE RESPONSIBILITY OF BEST BUY. YOU ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTIES AND LIMITED REMEDIES SET FORTH HEREIN REPRESENT AN INSEPARABLE ALLOCATION OF RISK (INCLUDING, WITHOUT LIMITATION, IN THE EVENT OF A TOTAL AND FUNDAMENTAL BREACH OF THESE TERMS OF PURCHASE) THAT IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. FOR THE AVOIDANCE OF DOUBT, THESE LIMITATIONS OF LIABILITY SHALL SURVIVE EACH PURCHASE AND ANY TERMINATION OF THESE TERMS OF PURCHASE.

## **13. Use of the Site**

The Site (including all content, functions and information) is provided on an "as is" basis without any representations or warranties of any kind, express or implied. You agree and acknowledge that B-Stock and Best Buy make no guarantee of the accuracy, correctness or completeness of any Content and are not responsible for: any errors or omissions arising from the use of any thereof; any failures, delays or interruptions in the delivery of any Content contained with the Site; losses or damages arising from the use of the Content provided by the Site; any conduct by you in connection with the Site; or any 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 B-Stock or Best Buy in writing (including by posting on the Site) from time to time.

## **14. Termination of Terms of Purchase**

Notwithstanding anything to the contrary herein, Best Buy reserves the right, at its sole discretion, to suspend or terminate your use of the Site with or without cause and without notice. If you fail to comply with any term or condition in this Terms of Purchase, Best Buy may immediately terminate your account, deactivate your password and seek any other remedy available to Best Buy or its affiliates.

## **15. General Provisions**

**15.1** Relationship of the Parties. Best Buy and you understand and acknowledge that each shall perform its duties and obligations under these Terms of Purchase as an independent contractor and that these Terms of Purchase do not create a joint venture, partnership, employment or agency relationship between you and Best Buy. You represent and warrant to Best Buy that, other than as specifically set forth in these Terms of Purchase, you have not paid any consideration or made any payments of any kind to any person or entity, including but not limited to Best Buy employees, officers, and directors, to obtain these Terms of Purchase or for the purchase of the items being sold under these Terms of Purchase.

**15.2** Assignment. You shall not delegate, subcontract, assign or transfer any of your rights, duties, or obligations under these Terms of Purchase or the right to purchase the Inventory Products without the prior express written consent of Best Buy. In the event that Best Buy grants any such consent, you shall be solely responsible for the conduct of such agents and assignees, and the granting of such consent shall in no way modify or affect your duties to Best Buy under these Terms of Purchase. Best Buy may assign these Terms of Purchase to a parent, a subsidiary or an affiliated entity. Subject to the foregoing, these Terms of Purchase shall be binding upon and inure to the benefits of the parties, and their respective successors and assigns.

**15.3** Governing Law. These Terms of Purchase shall be governed by the laws of the State of Minnesota without regard to its rule of conflicts of laws, and venue shall be within the State of Minnesota. Each party hereby expressly consents to the original and exclusive jurisdiction of the state and federal courts located in Minneapolis, Minnesota. The rights and obligations of the parties under these Terms of Purchase shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

**15.4** Compliance with Law. You represent and warrant that you will comply with all applicable laws, rules, and regulations in your performance of these Terms of Purchase, including but not limited to export laws as outlined in the Export Administration Regulations (EAR), and the United States Foreign Corrupt Practices Act (FCPA) and all other applicable anti-bribery laws. You agree that all sales are 'Ex Works - Point of Purchase'. Title and risk of loss pass to you, including payment of all transportation and insurance cost, from the Point of Purchase. You represent and warrant that you will not export any of the Inventory Products. Notwithstanding anything else to the contrary herein contained, you shall not export for sale or resell (and shall ensure that contracts for your sales prevent the export for sale or resale of) any Inventory Product to or import into any country outside the United States. You shall not directly or indirectly sell any Inventory Product within the United States if you have knowledge or have reason to believe that the purchaser or any third party will export the Inventory Product for sale or resale or import into any country outside the United States. You shall not remove (and shall ensure that contracts for your sales prevent the removal of) any notices that may appear on the packaging restricting sale of any Inventory Product outside of the United States. In addition to all other requirements contained in these Terms of Purchase, you agree to comply with any additional requirements imposed by Best Buy's vendors and/or the original manufacturers of the Inventory Products.

**15.5** Notices. All notices, demands and other communications that are required or may be given under these Terms of Purchase will be in writing and will be deemed to have been duly given if emailed by Best Buy or if mailed by either party certified mail, return receipt requested, or by a nationally recognized overnight courier service, receipt confirmed. Notices to you via email will be deemed effective at the time the email is sent. In the case of notices via certified mail or courier service, notices will be deemed effective upon the date of receipt. Notices to you will be addressed to the email or physical address you provided during your Site registration process and notices to Best Buy must be mailed and addressed to Best Buy, Attn: Legal Department, 7601 Penn Ave. South, Richfield, MN 55423, unless either party notifies the other of a change of address or email address, in which case the latest noticed address or email address will be used. If Best Buy receives a message that your email address is no longer valid or that the email communication could not be delivered, notice shall be deemed to have been provided to you at the time Best Buy received notice of non-delivery.

**15.6** Authority. You represent and warrant to Best Buy that if you are using the Site on behalf of a company or entity that will purchase the Inventory Products that such company or entity is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and that you and the company have the requisite power and authority to execute and deliver these Terms of Purchase and the requisite power and authority and ability to perform the obligations under these Terms of Purchase, including the purchase of the Inventory Products. You further represent and warrant that these Terms of Purchase have been duly authorized, executed and delivered by you and constitute a valid and binding obligation of you or the company or entity on whose behalf you are entering into these Terms of Purchase enforceable against you or such company or entity according to its terms.

**15.7** General. The headings contained herein are for the convenience of reference only and are not of substantive effect. If any provision herein shall be deemed or declared unenforceable, invalid or void by a court of competent

jurisdiction, the same shall not impair any of the other provisions contained herein which shall be enforced in accordance with their respective terms. Any of the provisions of these Terms of Purchase may be waived by the party entitled to the benefit thereof. Neither party will be deemed, by any act or omission, to have waived any of its right or remedies hereunder unless such waiver is in writing and signed by the waiving party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event will not be construed as continuing or as a bar to or waiver of any other right or remedy, or as to a subsequent event. You understand and agree that the sale of Inventory Product by Best Buy through the Site is not exclusive. Best Buy may sell the same type of inventory to other bidders. You further understand and agree that Best Buy is not guaranteeing any minimum quantity, quality or a certain type of product. These Terms of Purchase along with any Email Notification(s) and any other terms regarding your use of the Site constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter, and except as otherwise provided herein may not be amended, supplemented, or modified in any way, except by an amendment in writing. No amendment to these Terms of Purchase will be effected by the acknowledgement or acceptance of a purchase order, invoice, or other forms stipulating additional or different terms. In the event of any conflict between the terms of use on the Site and these Terms of Purchase, the terms and conditions of these Terms of Purchase shall govern. The expiration or termination of these Terms of Purchase will not terminate vested rights of either party from any liabilities or obligations incurred under these Terms of Purchase prior to or which by its express terms or by their nature are intended to survive expiration or termination, including but not limited to provisions relating to confidentiality, payment, sanitization obligations, and indemnification.

**15.8 Force Majeure.** Best Buy shall not be liable or responsible to you, nor be deemed to have defaulted under or breached these Terms of Purchase, for any failure or delay in fulfilling or performing any provision of these Terms of Purchase, when and to the extent such failure or delay is caused by or results from acts beyond Best Buy's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) actions, embargoes or blockades in effect on or after the date of this Agreement; (e) action by any governmental authority; (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns or other industrial disturbances.

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

## **Exhibit A**

### **Media/Device Data Sanitization Standards – Best Buy**

This Exhibit A is attached to and incorporated within these Terms of Purchase.

#### **Purpose**

Best Buy has several businesses and capabilities that require the handling of media and/or devices which may contain personally identifiable information. As it relates to these standards, personally identifiable information is data that can be tied to a specific individual about a customer, or information owned or created by a customer (e.g., photos, videos, movies, documents), and subsequently stored on a product, device or the media contained therein. This data is valuable to the person to which it belongs and therefore there are inherent risks in handling these units and inadvertently exposing or sharing this information with someone other than the owner of the data.

#### **Standard**

Prior to transfer, disposal, refurbishing, recycling, resale or any other disposition, all devices capable of data storage and/or storage media of any kind must be subjected by you to a process that, using an industry-standard tool which meets or exceeds the requirements outlined in the National Institute of Standards and Technology Special Publication 800-88 rev. 1, Guidelines for Media Sanitization, or any successor version, removes all data from the device or makes such data incapable of being recovered by commercially available tool sets (hereinafter, a "Sanitization Method" whereby such product thereafter is deemed "Sanitized").

Without limiting the foregoing, you will use the Sanitization Methods defined in the following table with respect to each specific device type identified. Variation from the prescribed Sanitization Method is permitted only upon written approval by Best Buy. If you identify a device type that is not included in the table, you will promptly notify Best Buy of same so that a Sanitization Method can be identified and approved prior to handling these devices.

Device/Media Type	Sanitization Method
Mobile Computing (e.g., tablets, laptops)	Multi-pass secure data removal.
Desktop PCs	Multi-pass secure data removal.
Hard Drives (internal and external)	Multi-pass secure data removal.
Flash Drives/Memory Cards	Multi-pass secure data removal.
Gaming Systems	Pre-approved, manufacturer-established procedures for secure data removal (e.g., restoring unit to factory default state); or, if such procedures are unavailable, a secure data removal of the internal data storage device followed by the loading of the appropriate software applications.
Digital Cameras	Removable media must be removed from the device and destroyed using Best Buy pre-approved, procedures for secure data device destruction; or, if such procedures are unavailable, multi-pass secure data removal. Data contained within the device's internal memory must be sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal. If the testing process requires a picture be taken by you, a sign will be created that reads "[YOUR NAME] Tested" so purchaser does not mistake picture for another person's data.
Camcorders	Removable media must be removed from the device and destroyed using Best Buy pre-approved procedures for secure data device destruction. Data contained within the device's internal memory must be Sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal. If the testing process requires a picture be taken by you, a sign will be created that reads "[Your Name] Tested" so purchaser does not mistake picture for another person's data.
Phones/PDA/PDEDs	Removable media shall be removed from the device and data destroyed using Best Buy pre-approved procedures for secure data device destruction; or, if such procedures are unavailable, multi-pass secure data removal. SIM cards, where applicable, must be removed from the device and physically destroyed. Data contained within the device's internal memory — including, but not limited to, phone logs, pictures, text messages, SMS messages, personal applications, phonebooks, calendars, tasks, and so forth — must be Sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal.
MP3 Players	Removable media shall be removed from the device and destroyed using Best Buy pre-approved procedures for secure data device destruction or, if such procedures are unavailable, multi-pass secure data removal. Data contained within the device's internal memory — including, but not limited to music, album art, pictures, and so forth — must be Sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal. If the device contains an internal hard drive - a low-level secure wipe followed by the loading of the devices appropriate software shall be deemed acceptable.

Digital Picture Viewers	Removable media shall be removed from the device and destroyed using Best Buy pre-approved procedures for secure data device destruction; or, if such procedures are unavailable, multi-pass secure data removal. Data contained within the device's internal memory must be sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal.
DVRs (Digital Video Recorders)	Removable media shall be removed from the device and destroyed using Best Buy pre-approved procedures for secure data device destruction; or, if such procedures are unavailable, multi-pass secure data removal. Data contained within the device's internal memory must be sanitized using pre-approved, manufacturer-established procedures for secure data removal; or, if such procedures are unavailable, multi-pass secure data removal.
E-Readers	Sanitize data using pre-approved, manufacturer-established procedures for secure data removal.
Blue-ray DVD Players	Sanitize data using pre-approved, manufacturer-established procedures for secure data removal.