

Posted May 10, 2024

These "**Terms of Service**" are between Furniture.com America LLC ("**FdC**") and the "**Participant**" listed in the "**Order Form**," and together with any Order Forms between the Parties, comprise the "**Agreement**," which is made as of the "**Effective Date**," listed on the first Order Form. FdC operates the platform "furniture.com" (including the website and any mobile apps) ("**FdC Site**"), through which FdC, among other things, promotes, aggregates, and advertises home furnishing products and services of participants, including products of FdC affiliates ("**FdC Products**"). Participant operates the "**Participant Site**" through which Participant promotes, advertises, and offers for sale home furnishing products and services ("**Participant Products**"). The FdC Site and the Participant Site are individually a "**Site**" and collectively the "**Sites**." This Agreement contemplates connections between the Sites, such as hyperlinks on the FdC Site to the Participant Site, as well as connections between FdC and Participant's System.

1. License grant.

- a. Participant grants and will provide to FdC a nonexclusive, royalty-free, fully paid-up "**License**" extending for the Term and in the United States and its territories the following "**Participant Licensed Items**": (a) hyperlinks to permit the FdC Site to link to the Participant Site ("**Participant Links**"); (b) information about Participant Products, Participant's brand, Participant's Site, and Participant's retail store locations, intellectual property, copyrights, trademarks, service marks, trade dress, copy, text, photographs, videos, brands, logos, slogans, trade names, product attributes (e.g. names, descriptions, types, prices, discounts, colors, material, dimensions, sizes, shapes, finishes, stock and availability), internet domain names, locations, hours, and contact information ("**Participant Information**"); (c) reviews of the Participant, its brand, and Participant Products from the Participant Site or a third-party review platform ("**Review Data**"); (d) access to scheduling APIs that allow visitors to create appointments at Participant's physical locations ("**Appointments Data**"); (e) access to allow FdC to embed (through technologies such as iframe) Participant Information ("**Embedded Content**"); and (f) information (including information about users of Participant's Site) generated by pixels, cookies, and other tracking technologies ("**Pixels**") to the extent the Parties agree to integrate such technologies on Participant's Site or Participant's System ("**Pixel Information**").
- b. Participant will give FdC access to the Participant Licensed Items by electronic means in accordance with the technical requirements provided to Participant. The License permits FdC to access, obtain, use, store, reproduce, modify (e.g., to resize, crop, or touch-up but without major substantive alteration), prepare derivative works of, transmit, disclose, publish, and display the Participant Licensed Items for the following purposes: to (i) operate, optimize, and improve the FdC Site and FdC's business; (ii) collect, analyze, and generate data, reports, and algorithms; and (iii) advertise, market, and promote the FdC Site, FdC Products, Participant Products, or Participant Licensed Items in any and all forms of media, e.g. television (e.g. broadcast, cable, satellite, streaming, and over-the-top), radio, internet, websites, and social media. FdC intends to create marketing, advertising, and promotional materials incorporating Participant Licensed Items (e.g., television ads or social media posts featuring photographs of Participant Products), and it will be impractical to remove Participant Licensed Items from such materials or stop such materials from continued circulation after the Term. Therefore, the License shall be perpetual only as to item (iii) above, and only with respect to such materials created during the Term.

2. Fees, payment, and taxes.

Participant will pay the "**FdC Fees**" described in the then-current Order Form. Participant will pay invoices within thirty (30) days of the invoice date. Late payments will be subject to the maximum rate of legal interest, and Participant will be responsible for the costs of collection, including attorneys' fees. Each Party is responsible for the payment of all applicable federal and state taxes, including any sales, use, excise or transfer taxes, imposed on it under applicable law. FdC may modify the FdC Fees at any time on written notice.

3. Term and termination.

The "**Term**" begins on the Effective Date and continues until all Order Forms terminate or expire. Unless otherwise specified, each Order Form will have an "**Initial Term**" of one (1) year from the Effective Date and will then automatically renew for successive one (1) year

"Renewal Terms". Either Party may terminate this Agreement or any Order Form at any time for any reason on thirty (30) days' written notice.

4. Editorial control.

Placement, locations, and manners and forms of use of Participant Licensed Items on the FdC Site shall be at FdC's sole discretion. FdC may withdraw or remove any Participant Licensed Item from the FdC Site if FdC determines, in its sole discretion, that the use of such Participant Licensed Item does, would, or may tend to violate or infringe any intellectual property, proprietary, contractual or other right of any third party; violate or be inconsistent with any Laws, court order, or ruling of any governmental agency or entity; jeopardize FdC's ability to protect its rights or property; include or otherwise make available any content which is inconsistent with FdC's standards and values; or expose FdC, its Affiliates or any of their customers or users to any civil, criminal or equitable liability, damages or risk of any type.

5. FdC intellectual property.

This Agreement does not confer on Participant any rights of use or other interest in the FdC Site or FdC IP. Participant may not display or otherwise use FdC IP without the prior written approval of FdC. **"FdC IP"** means all rights of FdC of the following types, which may exist or be created in any jurisdiction, whether registered or unregistered: works of authorship including copyrights, renewals of and moral rights relating thereto; trademarks, service marks, trade dress, copy, text, photographs, videos, brands, logos, slogans, trade names, products names, internet domain names, social media accounts and registrations and applications for registration relating thereto; trade secrets and confidential or proprietary information and knowhow; patents, patent disclosures, inventions, utility models and industrial designs, and applications and registrations related thereto; software and computer programs including programming tools, scripts, and routines as well as related designs, specifications, documentation, components, source or object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions; and other proprietary rights in intellectual property. FdC may use information and data that it collects and processes in the course of providing the services on the FdC Site, including from Participant Licensed Items ("Data") for its own business purposes, including but not limited to operating, improving, testing and maintaining the FdC Site and to develop additional products, tools, methods, services, models and algorithms. As such, Participant grants to FdC a non-exclusive, irrevocable, royalty free, transferable, worldwide license to collect, analyze and use such Data.

6. Reservation of rights.

The license in Section 1 is subject to Participant's right to use the Participant Licensed Items in its own business. Each Party's products or services may be similar to or competitive with products or services of the other Party or its affiliates, and nothing herein limits either Party's use of its Site to advertise, promote its intellectual property, or sell its or its affiliates' products or services.

7. Intellectual property restrictions.

Except as allowed under Section 1, neither Party shall suggest or imply that it or its Site is affiliated or associated with, or endorsed or sponsored by, the other Party or the other Party's Site. Each Party owns all right, title and interest in its intellectual property and its Site's content. Neither Party shall contest or challenge the validity, enforceability or ownership of the other Party's intellectual property or the content on the other Party's Site, or commit or authorize others to commit any act or omission that would impair the rights of the other Party in such Party's intellectual property or Site.

8. Representations and warranties.

a. Participant represents and warrants that:

- i. its networks, systems, software, and data (including Participant Licensed Items) that interact with FdC or the FdC Site ("**Participant System**") are and will be configured to industry standards, will securely operate and be transmitted to FdC and function on the FdC Site, and will not contain any virus, trojan horse, worm, backdoor, time bomb, or other device that permits unauthorized access to, disables, erases, or otherwise harms any system ("**Malicious Code**");
- ii. it shall comply with all applicable laws, statutes, ordinances, rules and regulations applicable to this Agreement,

Participant Information, and the Participant Site (e.g. consumer privacy and protection laws such as the California Consumer Privacy Act, the California Privacy Rights Act, and Proposition 65) ("**Laws**");

- iii. it shall (1) publish a privacy policy on Participant's Site that clearly and accurately discloses its use of Pixels, describes how Pixels may collect, use, and share users' information with third parties, and offers a mechanism for users to opt out of or consent to such collection, use, and sharing; (2) keep records of users' consent for as long as Participant uses Pixels; (3) not collect or share with FdC any personally identifiable information beyond what is agreed by the Parties; (4) not use Pixels on any Participant Site that collects or solicits information from, or is directed to, children under 16 years of age (or the age defined by applicable Laws); and (5) not use Pixels to reach audiences based on sensitive information such as financial status or health/medical information (or as defined by applicable Laws);
- iv. the use of the Participant Licensed Items will not infringe any third-party rights and it has (1) the right to use any third-party materials contained in the Participant Licensed Items and the Participant Site, (2) the right to sublicense any third-party materials contained in the Participant Licensed Items and the Participant Site in accordance with the terms of this Agreement, (3) obtained all licenses, rights, clearances and permissions necessary for FdC to exercise its rights in and to the use of the Participant Licensed Items and the Participant Site, free and clear of liens, claims and encumbrances, and (4) verified that all Participant Licensed Items and the Participant Site are accurate and are not in any respect false or misleading.

b. FdC represents that:

- i. it will comply with Laws applicable to this Agreement;
- ii. the FdC Site will perform materially in accordance with the terms of this Agreement; and
- iii. to the best of FdC's knowledge, the FdC Site does not contain any Malicious Code.

9. DISCLAIMER OF WARRANTY.

The FdC Site is provided "as-is." FdC makes no warranties under this Agreement. FdC expressly disclaims all warranties, express or implied, including warranties of merchantability, noninfringement, fitness for a particular purpose, or that the FdC Site will satisfy Participant's requirements or be uninterrupted or free of errors or harmful components.

10. LIMITATION OF LIABILITY.

- FdC and its affiliates will have no liability for indirect, incidental, special, consequential, or exemplary damages, including loss of profits, goodwill, use, or data, or other intangible losses relating to this Agreement, the FdC Site, or Participant's relationship with users of Participant's Site. The relationship between Participant and users of Participant's Site is strictly between Participant and such users, and neither FdC nor its affiliates are obligated to intervene in any dispute between them.
- FdC's and its affiliates' liability to Participant or any third parties relating to this Agreement or the FdC Site will be limited to the FdC Fees paid by Participant in the one-year period preceding the event giving rise to the claim. This limitation applies to all claims in the aggregate, including breach of contract or warranty, negligence, strict liability, misrepresentation, and other torts.
- These limitations apply to the fullest extent allowed by law and apply even if FdC or its affiliates have been advised of the possibility of such damages

11. Indemnification.

Each party ("**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other party and its predecessors, successors, assigns, and affiliates, and each of their directors, officers, shareholders, members, managers, partners, trustees, employees, subcontractors and agents ("**Indemnified Parties**"), with respect to any third-party claim, demand, suit, complaint, cause of action, debt, cost, fine, fee, penalty, damage, or liability, including reasonable attorneys' fees ("**Claims**"), to the extent that such Claim alleges or relates to

- a. the Indemnifying Party's breach of any applicable Law, representation, warranty, obligation or covenant in this Agreement;

- b. the Indemnifying Party's gross negligence, fraud, or willful misconduct;
- c. where Participant is the Indemnifying Party, (1) any warranty, condition, representation, indemnity, obligation, or guarantee granted by Participant to any users of the Participant Site or other third party; (2) Participant's use of the FdC Site or linkage of the Participant Site to the FdC Site; (3) that Participant Products, the Participant Site, or Participant Licensed Items are inaccurate, false, unfair, or misleading, or have caused injury or infringed intellectual property or other rights; (4) the performance or improper performance of Participant Products or services; (5) Participant's relationship or interaction with any user of the Participant Site; and
- d. where FdC is the Indemnifying Party, that the FdC Site has infringed the intellectual property rights of a third party. The Indemnified Party will promptly give notice of any Claim. The Indemnified Party may, at its expense, assist in defense, but the Indemnifying Party will control defense except that it may not settle any Claim without the prior written approval of the Indemnified Party

12. No Exclusivity.

This Agreement is not an exclusive arrangement. It does not restrict either Party from entering into similar arrangements with others if such arrangements do not breach this Agreement.

13. Feedback.

If Participant provides any feedback to FdC, Participant assigns to FdC all right, title, and interest in and to the feedback, and FdC is free to use, disclose, and otherwise exploit the Feedback for any purpose and without restriction. FdC will treat any feedback as nonconfidential.

14. Confidential Information

Each Party ("**Disclosing Party**") may disclose or make available Confidential Information to the other Party ("**Receiving Party**"). "**Confidential Information**" is information in any form or medium that the Disclosing Party considers confidential or proprietary, including information relating to this Agreement or to the Disclosing Party's technology, trade secrets, knowhow, operations, finances, vendors, plans, and strategies, whether or not identified as confidential.

Confidential Information does not include information that is (i) rightfully known to the Receiving Party without restriction before being disclosed or made available under this Agreement; (ii) generally known by the public other than by a breach of this Agreement; (iii) received by the Receiving Party on a non-confidential basis from a third party not under any confidentiality obligation; or (iv) independently developed by the Receiving Party without reference to or use of any Confidential Information.

FdC may obtain information about Participant Licensed Items and users' behavior on the FdC Site and may use such information in an aggregated and de-identified manner for any lawful purpose, including to compile statistical and performance information related to the FdC Site ("**Aggregated Statistics**"). Aggregated Statistics are not Confidential Information, and all right, title and interest in Aggregated Statistics are retained by FdC. The Receiving Party shall not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under this Agreement and shall safeguard Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care. If the Receiving Party is compelled by law to disclose Confidential Information, then, to the extent permitted by applicable Laws it shall promptly, and prior to such disclosure, notify the Disclosing Party so that it can seek a protective order or other remedy and shall and provide reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure.

15. Miscellaneous

- a. Entire Agreement; amendment; waiver. This Agreement is the entire agreement of the Parties with respect to its subject matter and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties,

written and oral, with respect to its subject matter. No amendment or waiver of any provision of this Agreement is effective except in a signed writing.

- b. **Notices.** All notices must be in writing and addressed to the Parties' addresses set forth on the Order Form. All notices must be delivered by personal delivery, nationally recognized courier, certified or registered mail, or email. Notice is effective upon receipt by the receiving Party. In the case of FdC, a copy of any notice shall also be sent to **legalnotices@furniture.com**.
- c. **Severability.** Any term of this Agreement being invalid, illegal, or unenforceable in any jurisdiction will not affect any other term or invalidate or render unenforceable such term in any other jurisdiction.
- d. **Governing Law and Venue.** This Agreement is governed by the laws of the State of New York without reference to conflicts of laws principles. Any claim relating to this agreement shall be heard exclusively, and each Party submits to the exclusive jurisdiction of, the state or federal courts in New York, New York.
- e. **Waiver of Jury Trial.** The Parties agree to waive their respective rights to a jury trial of any claim or cause of action related to this Agreement. The Parties each acknowledge that the waiver is a material inducement for each Party to enter into a business relationship, that each Party has already relied on the waiver in entering into this Agreement and has had legal counsel review the waiver.
- f. **Assignment.** Neither Party may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.
- g. **Insurance.** Participant shall maintain, at its own expense, the following insurance through companies rated A-VII or better: commercial general liability of \$1 million per claim; cyber liability of \$1 million per claim; a line of insurance that includes advertising injury or other coverage that would respond to a claim of intellectual property infringement of \$1 million per claim; and umbrella of \$1 million.
- h. **Equitable Relief.** A breach or threatened breach of Sections 4 (Editorial control), 5 (FdC Intellectual Property), or 14 (Confidentiality) would cause FdC irreparable harm for which monetary damages would not be adequate. In such event, FdC will be entitled to equitable relief without a bond. Such remedies are not exclusive and may be asserted in any court of competent jurisdiction.