

TERMS OF PURCHASE

Last Updated: October 20, 2019

1. Acceptance of Agreement

- a) **Acceptance of Terms.** This Terms of Purchase agreement ("Agreement") together with the [Terms of Use](#) is an ongoing contract between you and Home Depot U.S.A. Inc. ("Home Depot"), and it applies to your use of Home Depot's online liquidations website located at <https://bstock.com/homedepot/> (the "Site"), hosted and configured by B-Stock Solutions, Inc. ("BStock"), through which you may purchase Inventory Products from Home Depot in consideration of the mutual promises set forth herein and such other good and valuable consideration. This Agreement governs 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 this Agreement each time you log into the Site. If you do not agree to this Agreement, 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.
- b) **Modification of Terms.** Home Depot reserves the right in its sole and absolute discretion, from time to time, with or without notice to you, to change this Agreement. 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 this Agreement 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. The most current version of the Agreement will supersede all previous versions. Your use of the Site or continued purchases after changes constitute your notice of, and agreement to be bound by, such changes. No purchase order or other documentation issued by you to Home Depot will alter this Agreement unless signed by an authorized Home Depot representative. You agree to keep your email address and other contact information current at all times.

2. Additional Definitions

- a) "Buyer" or "you" or "your" shall mean the individual who purchases Inventory Products from Home Depot through the Site under the terms described herein and the entity that such individual represents in making the purchase, if applicable.
- b) "Completed Purchase" occurs when (i) you have provided to Home Depot 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 Home Depot's account specified in the Email Notification.
- c) "Email Notification" means the email you receive after you place the winning bid on Inventory Products available for sale on the Site. The Email Notification will be sent

to 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.

- d) "Extended Auction" shall mean an auction where if a bid is entered within the final 10 minutes of the original end time, the auction will be extended by 10 minutes. If a bid is then placed before the extended 10 minutes elapses, the auction will be extended again for 10 minutes and the listing will continue to be extended until there are no new bids placed within the final 10 minutes of the auction.
- e) "Inventory Products" shall mean Home Depot's products that are available for purchase on the Site under the terms described herein.
- f) "Listing" or "Listings" shall mean the content on the Site associated with particular Inventory Products, including, without limitation, the description and quantity of the Inventory Products. Home Depot 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.
- g) "Promotional Content" shall mean any and all information, service or content provided by Home Depot or its agents in any medium in connection with this Agreement, including promotional content and any Listing displayed on the Site.
- h) "Home Depot's Premises" shall mean any facility utilized or designated by Home Depot to store or distribute any Inventory Products, which may include a facility owned and operated by a third-party.

3. Auction Process

- a. 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. Home Depot 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.
- b. 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. By entering a bid on Inventory Products you agree that you accept all terms and conditions of this Agreement. In order for your bid to be eligible for the Auction, your bid must be (i) in an amount higher than both the amounts listed as the "opening bid" and the "current bid," as applicable, (ii) in the bid increments set forth on the bid page and (iii) placed before the scheduled end time for such Auction (including any additional time added for an Extended Auction). If your bid is deemed the winning bid, you will receive an Email Notification. It is your responsibility to keep your email address current and to timely check your email to determine if you are the winning bidder for any Auction in which you participated. Home Depot is not responsible for the failure of an Email Notification to reach a winning bidder for any reason, including, without limitation, technical problems or other system error.

- c. **Winning Bids.** If your bid is deemed the winning bid at the end of an Auction for Inventory Products, you agree to promptly purchase such Inventory Products pursuant to the terms and instructions set forth in the Email Notification and this Agreement. If you fail to register a Completed Purchase within two (2) business days of when the Email Notification is sent by Home Depot, you will forfeit any right to purchase such Inventory Products, and Home Depot may (1) deactivate your account and password so you can no longer access the Site, and (2) Home Depot, 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

- a. **Purchase Price.** In consideration for your payment of the purchase price set by the winning bid for Inventory Products in an Auction (the "Purchase Price") and all applicable taxes, Home Depot hereby agrees to sell to you Inventory Products for which you have posted the winning bid and having complied with the terms set forth in the Email Notification and this Agreement. 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 Home Depot account set forth in the wiring instructions included in the Email Notification. The instructions and other conditions set forth in the Email Notification are part of the contract between you and Home Depot and thus create enforceable obligations by-and-between Home Depot and you. Your active participation on the Site affirms your acceptance of all terms and conditions set forth in the Email Notification and this Agreement. Nothing in this Agreement shall otherwise obligate Home Depot 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.
- b. **Canceled Bids and Purchases.** Please note that there may be certain bids and purchases that Home Depot is unable to accept and must cancel. Home Depot reserves the right, at its sole discretion, to refuse or cancel any bid or purchase for any reason at any time. Some situations that may result in your bid or purchase being canceled include, without limitation, inaccuracies or errors in product or bid information or problems identified by Home Depot's Credit and Fraud Department. While Home Depot 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, Home Depot shall have the right, at its sole discretion, to refuse or cancel any purchases placed for such Inventory Products. In the event that Home Depot must cancel a bid or purchase, Home Depot will cancel your bid or purchase and notify you by email of such cancellation.

- c. **Payment Terms.** You shall submit the Purchase Price to Home Depot under the payment terms set forth in the Email Notification, on the Site, and this Agreement. Home Depot may revise the payment terms from time to time in its sole discretion upon notice to you on the Site or in an email; provided, however, that any change to payment terms will not be effective for any then-pending sale, but will only be effective for the next sale subsequent to such notice. Upon acceptance of such Purchase Price and the fulfillment of any other conditions to such sale described herein, Home Depot will sell, assign, transfer and convey to you all of Home Depot's right, title and interest 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.
- d. **Other Conditions.**
 - 1. Home Depot shall not be obligated to complete any sale or deliver any Inventory Products to you unless and until you have submitted an accurate and complete re-sale certificate in a form acceptable to Home Depot.
 - 2. Buyer warrants and assures Home Depot that it will not resell Inventory Products within a twenty (20) mile radius of any Home Depot store.
 - 3. Any breach of this Section 4 by Buyer may result in Home Depot's termination of Buyer's access to the Site for Inventory Product purchases. Buyer further acknowledges and agrees that such a breach will result in immediate irreparable harm to Home Depot. Monetary damages may not be a sufficient remedy for such breach. Accordingly, Home Depot shall be entitled to equitable relief by way of temporary and permanent injunctions, in addition to monetary damages, and such other and further relief as any court of competent jurisdiction may deem just and proper. In the event that Home Depot uses any remedy afforded by this provision, Home Depot shall not be deemed to have waived any other rights or remedies available to it under this Agreement or applicable law.
- e. **Identification of Home Depot.** 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 Home Depot's specifications, either (a) to remove, if possible, all of the identifying marks, including, but not limited to, Home Depot's or its affiliates' names, logos, serial numbers, UPC numbers, RA numbers, and other identifying marks (including without limitation, tags, labels, price stickers, bar codes, or other carton or packaging markings) from the packaging and (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 Home Depot customer information, including without limitation, sales receipts, addresses, phone

numbers and credit card numbers, if you receive any such information that may be included with the Inventory Products, you will remove, delete and destroy such information. You shall not under any circumstances (i) identify Home Depot, 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 Home Depot, its parent or any of its divisions or affiliates, in any manner; (iii) make reference to Home Depot or its parent or any of its affiliates or divisions in any signing or advertising; (iv) make reference to a the source of the Inventory Products; or (v) advertise the Inventory Products using any name related to Home Depot or its suppliers.

5. Removal and Acceptance of Inventory products.

- a) **Removal and Shipment of Inventory Products.** The Home Depot will provide shipping for all auction orders. Shipments will take place within 3 business days of wire transfer. You will be contacted by the shipping carrier shortly after payment to schedule your delivery time and also to verify address and delivery requirements. You will not need to arrange your own shipping carrier, nor call the warehouse to schedule shipments. The carrier will call you. On each auction page, the Shipping Cost will be accurate based upon the weight and pallet count of the lot, and your zip code and state stored in your Personal Information. Changing your shipping address may update shipping cost on the auction page. Upon conclusion of the auction, you will be responsible to pay the winning bid amount plus the shipping amount. Once payment is made, the address on file will be used for shipping. Changing your address AFTER making payment may delay delivery of your goods AND may generate reconsignment fees requiring additional wiring of funds. Buyers are responsible for unloading all trucks. The unloading location of your order has to have a loading dock or forklift in order to unload the goods, as not every carrier truck is guaranteed to have a liftgate. Unloading/lumper fees, if any, are the responsibility of the buyer. Buyers will be responsible for all shipping costs related to the delivery of any purchased Inventory to you, including any applicable storage or other costs assessed by such carrier in the event of such carrier's inability to deliver such Inventory to you. If you fail to agree to take receipt of Inventory Products within three (3) business days of the Completed Purchase of such Inventory Products, Home Depot 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 Home Depot less (i) a storage charge of \$10 per pallet per each day Home Depot held the Inventory Products for you after you registered a Completed Purchase and (ii) a restocking fee of ten percent (10%) of the Purchase Price.
- b) **Title; Risk of Loss.** Title to the Inventory Products shall remain with Home Depot until you take possession of the Inventory Products at the Inventory Location. You expressly acknowledge that risk of loss and liability for the Inventory Products shall pass to you upon your or your agent's receipt of the Inventory Products at the Inventory Location. You 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. 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.

- c) Acceptance. Your acceptance of possession of the Inventory Products from Home Depot pursuant to Section 5(b) 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(d). All sales are final. No returns or refunds are allowed. All Inventory Products purchased at <http://homedepot.bstockolutions.com> are sold in "As Is" condition without warranty of any kind and are not eligible for any warranty coverage.
- d) Inspection. You shall have five (5) business days from the date of delivery of Inventory Products in accordance with Section 5(a) and 5(b) to inspect the shipment for any discrepancies in the quantity delivered and report such discrepancy to Home Depot in writing. Buyer must provide a detailed manifest, identifying each item that is missing, as well as any supporting images or other documentation. Home Depot reserves the right to conduct an additional inspection at its own expense. If Home Depot, acting reasonably and in good faith, agrees that an under delivery has occurred greater than 5%, based on the listed retail value of the auction, Home Depot 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, Home Depot will issue Buyer a reimbursement in the amount of \$100 (i.e., 10% of the 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 Home Depot 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.

6. Confidentiality

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 such 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 Home Depot. 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 this Agreement without Home Depot's prior written approval and consent. Notwithstanding anything in this Section 6 to the contrary, any information (i) already in the public domain, (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. Indemnity

- a) You shall indemnify and hold Home Depot 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, (ii) any sale, use or handling of the Inventory Products or (iii) any breach of this Agreement.
- b) 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 THIS AGREEMENT, THE INVENTORY PRODUCTS ARE PROVIDED BY HOME DEPOT TO YOU "AS IS", "WITH ALL FAULTS" AND "WHERE IS" AND HOME DEPOT 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 ACKNOWLEDGE, BY YOUR USE OF THE SITE, THAT YOUR USE OF THE SITE IS AT YOUR SOLE RISK. HOME DEPOT AND ITS AFFILIATES WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND, OR LOSS OF GOODWILL, CUSTOMERS OR PROFITS, ARISING OUT OF OR RELATED TO THESE TERMS, EVEN IF HOME DEPOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL HOME DEPOT'S LIABILITY FOR ANY AND ALL LOSSES OR DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, EXCEED THE PURCHASE PRICE PAID BY YOU TO HOME DEPOT FOR THE INVENTORY PRODUCTS AT ISSUE. HOME DEPOT SHALL NOT BE HELD LIABLE FOR ANY ERROR IN A LISTING THAT HOME DEPOT CORRECTS PRIOR TO THE PURCHASE OF THE INVENTORY PRODUCTS TO WHICH THAT LISTING APPLIES. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE EACH PURCHASE TRANSACTION AND ANY TERMINATION OF THIS AGREEMENT. Some states do not allow the exclusion or limitation of incidental, consequential or special damages, or the exclusion of implied warranties. Therefore some of the limitations set forth in this section may not apply to you.

9. Use of the Site

You agree and acknowledge that neither Home Depot nor BStock make any guaranty of the accuracy, correctness or completeness of any Promotional 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 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 Terms of Use and Privacy Policy applicable to the Site as may be published or provided by BStock or Home Depot (including by posting on the Site) from time to time.

10. Breach of Agreement

If you fail to comply with any terms or conditions of this Agreement, Home Depot may immediately terminate your account, deactivate your password and/or seek any other remedy available to Home Depot or its affiliates.

11. General Provisions

- a) This Agreement is governed by the laws of the state of Georgia, without reference to its choice of law rules. Any action or proceeding arising out of, related to, or in any way involving this Agreement and/or your participation in or involvement with the Site must be brought in the state or federal courts located in Atlanta, Georgia. By conducting business with Home Depot, you consent to the exclusive personal jurisdiction of such courts. No waiver of any provision of this Agreement shall constitute a continuing waiver, and no waiver shall be effective unless made in a signed writing. The division of this Agreement 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 this Agreement.
- b) Except as expressly provided herein, this Agreement does not confer any rights or privileges upon any third party.
- c) Home Depot shall not be liable to you 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 Home Depot's reasonable control, whether or not of the kind specifically enumerated above.
- d) 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 any Inventory Products to Buyer and/or to consummate the transactions contemplated herein.
- e) This Agreement was last updated on **October 20, 2019**. Please check the Site periodically for changes.