

MarketSquareTM

Consignment Terms of Service (last updated June 7th, 2017)

These Consignment Terms of Service (“Consignment Terms”), which shall apply in all respects to any and all consignments conducted through the Site (“Consignments”), are hereby incorporated by reference in that certain Website Terms of Use Agreement, which governs Use of the Site (“Terms of Use”). Each capitalized term used but not otherwise defined in these Consignment Terms shall have the meaning ascribed to such term in the Terms of Use. As used herein, the term “Consignee” shall refer to MarketSquare Inc. (“MarketSquare”), and the term “Consignor” shall refer to the individual or entity using the Site for consignment purposes. Consignee and Consignor are individually referred to herein as “Party” and, collectively, as “Parties.”

1. Consignment of Merchandise.

(a) Consignor shall be present and available for pickup the items subject to Consignment at such locations as the parties may agree (each a “Pickup Location”) and at the times agreed by the parties (all such items, collectively, “Consigned Merchandise”). Alternatively, consignor shall deliver the items subject to Consignment to Consignee at such locations as the parties may agree (each a “Delivery Location”) and at the times agreed by the parties (all such items, collectively, “Consigned Merchandise”). In the event a scheduled pickup is cancelled within 24 hours of its scheduled occurrence, a forty nine dollar (\$49) fee may be charged.

(b) Consignee shall pick-up or accept each delivery of Consigned Merchandise and hold it available for sale according to these Consignment Terms. Consignor agrees to the relevant one-time (not per item) pickup fee, as outlined below by zip code; this fee will be assessed against the consignor’s account and taken out of the proceeds from sale of Consigned Merchandise. Pickups schedule for Saturday or Sunday are subject to a \$19 convenience fee.

Zone 1 (\$39 pickup fee) - 60618, 60625, 60647, 60641, 60613, 60657, 60640, 60659, 60614, 60639, 60622, 60630, 60660, 60651, 60642, 60645, 60712, 60612, 60646, 60624, 60610, 60626, 60674, 60654, 60661, 60644, 60634, 60606, 60607, 60707, 60302, 60611, 60202, 60602, 60601, 60706, 60303, 60603

Zone 2 (\$59 pickup fee) - 60604, 60301, 60701, 60656, 60076, 60689, 60204, 60209, 60304, 60077, 60623, 60608, 60305, 60203, 60605, 60631, 60664, 60668, 60669, 60670, 60673, 60675, 60677, 60678, 60680, 60681, 60684, 60685, 60686, 60687, 60688, 60690, 60691, 60693, 60694, 60696, 60697, 60699, 60695, 60171, 60201, 60208, 60053, 60804, 60714, 60616, 60130, 60682, 60161, 60153, 60176, 60068, 60160, 60029, 60141, 60091, 60402, 60632, 60131, 60165, 60609, 60043, 60164, 60546, 60155, 60653, 60104, 60019, 60018, 60666, 60534, 60017, 60025, 60513, 60615, 60163, 60093, 60638, 60154, 60162, 60526, 60629, 60636, 60016, 60105, 60399, 60621, 60026, 60082, 60106, 60637, 60126, 60501, 60022, 60499, 60652, 60062, 60056, 60525, 60558, 60065, 60009, 60459, 60191, 60649, 60620, 60181, 60619, 60523, 60456, 60458, 60521, 60455

Zone 3 (\$89 pickup fee) - 60805, 60007, 60522, 60070, 60454, 60101, 60143, 60005, 60457, 60453, 60599, 60090, 60514, 60148, 60415, 60006, 60655, 60559, 60035, 60643, 60617, 60480, 60465, 60157, 60015, 60628, 60004, 60482, 60527, 60040, 60008, 60037, 60173, 60803, 60137, 60139, 60515, 60138, 60117, 60196, 60089, 60108, 60069, 60561, 60199, 60172, 60406, 60038, 60055, 60078, 60094, 60159, 60168, 60179, 60193, 60463, 60827, 60464, 60472, 60516, 60633, 60095, 60189, 60445, 60067, 46394, 60194. 60074, 60195, 60188, 60469, 60045, 60197, 60116, 60128, 60132, 60532, 60169, 60187, 60419, 60133, 60517, 46320, 60439, 60426, 46327, 60428, 60452, 60462, 60190, 60061, 60409, 46312, 60473, 60107, 60044, 60047, 60540, 60192, 60566, 60567, 60467, 60440, 60565, 60103, 60088, 60186, 60563, 60429, 60011, 60185, 60048, 60477, 60478, 60064, 60476, 60430, 60555, 60086, 60487, 46325, 46324, 60438, 60010, 60491, 60120, 46323, 60060, 60422, 46406, 60184, 60425, 60085, 46321, 60490, 60441, 60446, 46402, 60598, 60461, 60079, 46404, 60519, 60448, 60121, 60122, 60411, 46322, 60174, 46401, 46411, 60412, 60564, 60572, 60502, 60443, 60134

(c) Consignor agrees to communicate any and all damages to consigned merchandise prior to pickup. Consignor agrees to have all items requiring disassembly (e.g. bed frames, dining tables, etc.) disassembled by consignor prior to pickup; any items disassembled by MarketSquare team on-site will result in an additional \$19 assessed fee per disassembled item. Consignor agrees to have all items for pickup located on first floor of residence, or to provide access to an elevator for transport. Any items requiring the use of stairs (other than entryway or foyer stairs) will result in a \$19 fee per item, per flight (floor) of stairs. Furthermore, consignor agrees to the following item pickup fees: a) \$19 fee per reclining item, per item containing glass, per bed frame and per rug, b) \$29 per dining table larger than 60 inches in width or depth.

(d) Consignor agrees that if a consigned items is included in a MarketSquare rental transaction, the consignor will be paid out as if the item was purchased at its current list price and the item becomes property of MarketSquare Inc. The consignor acknowledges all rental items eventually come back to MarketSquare and will be resold, from which all proceeds belong to MarketSquare Inc.

(e) The Parties intend that Consignor shall have a true consignment with respect to Consigned Merchandise within the meaning of, inter alia, sections 9-103, 9-317, 9-319, 9-322 and 9-324 of the Uniform Commercial Code (the "U.C.C"), as adopted in each jurisdiction where Consigned Merchandise is located. These Consignment Terms shall constitute a true consignment within the meaning of the U.C.C. in all respects, and not a consignment intended as security or a purchase or sale of merchandise by Consignee. Notwithstanding the foregoing, in the event that there is a final determination by a court of competent jurisdiction that these Consignment Terms and delivery of any Consigned Merchandise for any reason do not create or constitute a true consignment, then in such event, Consignee hereby grants to Consignor a first priority and continuing security interest and lien in and to the Consigned Merchandise, improvements thereon and accessions thereto, and any and all proceeds (including but not limited to insurance proceeds) from the sale or other disposition of Consigned Merchandise.

(f) If, notwithstanding the Parties' express agreement that these Consignment Terms, create a true consignment and that all deliveries of Consigned Merchandise hereunder shall constitute true consignments of Consigned Merchandise, a Bankruptcy Court shall determine that a sale of

Consigned Merchandise has occurred, for purposes of Consignor's reclamation rights under the Bankruptcy Code and Section 546 of the Bankruptcy Code in particular, Consignee acknowledges that it will not be in "receipt" of the Consigned Merchandise at any time prior to, and will be in "receipt" thereof only at, the time of Consignee's purchase of such goods from Consignor by appropriate notification. In such event Consignee agrees that Consignor may elect to exercise its reclamation rights with respect to purchased Consignment Merchandise both in lieu of and in addition to exercising its rights to the Consigned Merchandise (or to the proceeds thereof) under its security interest.

2. Title to Consigned Merchandise.

Consignor is and shall remain the owner of Consigned Merchandise, retaining full title to each item of Consigned Merchandise until its sale by Consignee pursuant to these Consignment Terms. Consignee shall acquire no right, title or interest in the Consigned Merchandise other than the right to possess the Consigned Merchandise as a consignee and sell the Consigned Merchandise in the ordinary course of its business and in accordance with these Consignment Terms.

3. Authority to Sell Consigned Merchandise.

(a) Consignor hereby grants to Consignee the exclusive right to sell Consigned Merchandise for the benefit of Consignor pursuant to these Consignment Terms. All sales prices for Consigned Merchandise shall be determined by mutual consent of the Parties.

(b) Consignee may only sell the Consigned Merchandise in the ordinary course of its business, and may not sell Consigned Merchandise in bulk or convert Consignment Merchandise to an "asset" of Consignee for accounting purposes without prior written consent from Consignor, or unless each of the following conditions are met: (i) the full one hundred twenty (120) day consignment period has ended; this period includes a sixty (60) day initial list price consignment period, and a sixty (60) day price reduction consignment period; (ii) MarketSquare has made a good faith effort via electronic data information ("EDI") to arrange for donation, pickup or transfer of title of the item; and (iii) Consignor has not responded to MarketSquare's communication within a seven (7) day period after the 120 day period has ended.

4. Proceeds and Terms of Sale.

(a) Consignee is entitled to retain forty percent (40%) of the proceeds from sale of any item of Consigned Merchandise ("Consignee Retention"), if item is sold for full list price. Consignee shall pay Consignor the proceeds from any such sale, less the applicable Consignee Retention, within fifteen (15) business days of receipt of item to buyer, which shall occur within seven (7) business days following Consignee's receipt of such proceeds. All such payments shall be made by a method mutually agreeable to the Parties. Notwithstanding the foregoing, in no event shall Consignee be obligated to make any such payments to Consignor unless and until Consignee receives the proceeds from any such sale.

(b) Notwithstanding any other provision hereof, Consignee, in the exercise of its sound business judgment, may adjust the initial list price for any item of Consigned Merchandise, prior to expiration of a sixty (60) day initial list price consignment period, by no more than ten percent (10%) in an effort to increase the likelihood of a sale of such item. In all other situations, Consignee agrees to maintain the agreed upon sales price set by the Consignor and the Consignee for each item of Consigned Merchandise, and will accept nothing less than such sales price for such item, unless otherwise agreed upon in writing by the Parties. Following the sixty (60) day initial consignment period, in the exercise of its sound business judgment, Consignee may also reduce the sales price of such item in accordance to the relevant schedule below.

Selects items - 10% discount on 61st day, 10% discount on 76th, 10% discount on 91st day, 10% discount on 106th day, 10% discount on 121st day, 10% discount on 136th day, 15% discount on 151st day, 15% discount on 166th day, 20% discount on 181st day (eligible for donation)

Non-Selects items - 10% discount on 61st day, 15% discount on 76th day, 15% discount on 91st day, 15% discount on 106th day, 20% discount on 121st day (eligible for donation)

(c) In no event will Consignee assume any responsibility for, or insure against, damage, theft, or loss of any item of Consigned Merchandise, whether while in Consignee's possession or under its control or during delivery to Consignee.

(d) For each and every item of Consigned Merchandise delivered to Consignee, Consignor agrees to leave such item with Consignee for a minimum period of one hundred twenty (120) days, commencing on the date of delivery to Consignee. If such item does not sell within such 120 day period and either Party notifies the other Party in writing that such Party no longer desires to sell such item on the Site, Consignor promptly must (i) pickup such item from the Consignee location where it is being held; (ii) arrange for return delivery or shipping of such item at Consignor's sole risk and expense; or (iii) notify Consignee in writing that Consignee may dispose of such item in Consignee's sole and exclusive discretion. Immediately upon Consignor's performance of its obligations under any of foregoing clauses (i) and (iii), the Consignment with respect to the applicable item of Consigned Merchandise involved will terminate. Consigned Merchandise will be kept at the Delivery Location, or such other location of which Consignee notifies Consignor in writing, for such 120 day period or until sold, whichever occurs first, in accordance with these Consignment Terms.

(e) Upon or before Consignor's delivery to Consignee of any items of Consigned Merchandise, Consignor will provide a reasonably detailed, complete, and accurate written inventory list of and information relating to all such items that will be subject to Consignment hereunder, including without limitation the number of each type of such item, photos and other images thereof requested by Consignee, the name/description of each such item, the brand (if known), and the suggested sales price for each item (collectively, "Merchandise Information"). Such list shall be signed by both Parties upon Consignee's acceptance, if any, of such items for Consignment hereunder, at which time such list shall be deemed incorporated by reference into these Consignment Terms solely for purposes of that specific Consignment. Consignor is solely liable for, and shall indemnify Consignee from and against any and all claims, liability, costs, or expenses asserted against or incurred by Consignee, arising from or relating to any inaccurate or incomplete Merchandise Information. Except for the

foregoing Merchandise Information, for which Consignor shall be solely responsible, Consignee shall be responsible for maintaining all records in connection with Consignments hereunder.

(f) Consignee shall have the right to use any and all Merchandise Information in connection with the advertising, promotion, offer to sell, and sale of Consigned Merchandise. In addition, Consignee shall have the right to (i) obtain and use photos and other images of the Consigned Merchandise in connection with the foregoing activities and (ii) clean and wrap items of Consigned Merchandise delivered to Consignee as Consignee deems appropriate.

5. Expenses of Sale and Taxes.

(a) Any and all expenses related to any sale of Consigned Merchandise, including expenses incurred to maintain any premises where Consigned Merchandise is located, are Consignee's exclusive obligation.

(b) Consignee shall pay all sales, use, or other similar taxes levied by a duly constituted taxing authority against or upon the sale, use, or purchase of Consigned Merchandise by Consignee.

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