

# Fashion Clerk User Agreement

The following describes the terms on which Fashion Clerk offers you access to our services.

## **Introduction**

Welcome to Fashion Clerk. By using Fashion Clerk (including FashionClerk.com and its related sites, services and tools), you agree to the following terms with Fashion Clerk. If you reside outside of the United States, you are contracting with our company in the United States. If you have any questions, please refer to our help section.

This Agreement is effective on January 1, 2012, for current users, and upon acceptance for new users.

## **Scope**

Before you may become a member of Fashion Clerk, you must read and accept all of the terms in, and linked to, this User Agreement and the Fashion Clerk Privacy Policy. By accepting this User Agreement, you agree that this User Agreement and Privacy Policy will apply whenever you use Fashion Clerk sites or services.

## **Using Fashion Clerk:**

While using Fashion Clerk sites, services and tools, you will not:

violate any laws, third party rights or our policies;

use our sites, services or tools if you are not able to form legally binding contracts, are not a valid business entity, are under the age of 18, or are temporarily or indefinitely suspended from using our sites, services or tools;

fail to deliver payment for items purchased by you, unless the seller has materially changed the item's description after you bid, or a clear typographical error is made;

fail to deliver items purchased from you, unless the buyer fails to meet the posted terms, or you cannot authenticate the buyer's identity;

manipulate the price of any item or interfere with other users' listings;

post false, inaccurate, misleading, defamatory, or libelous content (including personal information);

take any action that may undermine the feedback or ratings systems (such as displaying, importing or exporting feedback information off of the sites or using it for purposes unrelated to Fashion Clerk);

transfer your Fashion Clerk account (including feedback) and User ID to another party without our consent;

## Fashion Clerk User Agreement

distribute or post spam, unsolicited, or bulk electronic communications, chain letters, or pyramid schemes;

distribute viruses or any other technologies that may harm Fashion Clerk, or the interests or property of Fashion Clerk users;

export or re-export any Fashion Clerk tools except in compliance with the export control laws of any relevant jurisdictions;

copy, modify or distribute rights or content from the Fashion Clerk sites, service or tools or Fashion Clerk copyrights and trademarks; or

harvest or otherwise collect information about users, including email addresses, without their consent.

### **Abusing Fashion Clerk**

Fashion Clerk and the Community work together to keep our site and services working properly and the Community safe. Please report problems, offensive content, and policy violations to us.

Fashion Clerk works to ensure that listed items do not infringe upon the copyright, trademark or other intellectual property rights of third parties. If you believe that your intellectual property rights have been violated, please notify us at [report@fashionclerk.com](mailto:report@fashionclerk.com) we will investigate.

Without limiting other remedies, we may limit, suspend or terminate our service and user accounts, prohibit access to our sites and their content, services and tools, delay or remove hosted content, and take technical and legal steps to keep users off the sites if we think that they are creating problems or possible legal liabilities, infringing the intellectual property rights of third parties, or acting inconsistently with the letter or spirit of our policies. Additionally, we may, in appropriate circumstances and at our discretion, suspend or terminate accounts of users who may be repeat infringers of intellectual property rights of third parties. We also reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a long time, or to modify or discontinue Fashion Clerk, services or tools.

### **Fees and Services**

Joining Fashion Clerk and conducting transactions is free. We do charge fees for some transactions and will clearly display which services those are for. When you list an item or use a service that has a fee, you have an opportunity to review and accept the fees that you will be charged based on our Fees schedule, which we may change from time to time. Changes to that schedule are effective after we provide you with at least fourteen days' notice by posting the changes on the Fashion Clerk site. If we offer new services that have fees, those fees will be in effect when we post the new service on the site.

Unless otherwise stated, all fees are quoted in U.S. Dollars. You are responsible for paying all fees and applicable taxes associated with our site and services in a timely manner with a valid payment method. If your payment method fails or your account is past due, we may collect fees owed using other collection

# Fashion Clerk User Agreement

mechanisms. (This includes charging other payment methods on file with us, retaining collection agencies and legal counsel.

## **Content**

When you give us content, you grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to exercise any and all copyright, trademark, publicity, and database rights (but no other rights) you have in the content, in any media known now or in the future.

## **Limitation of Liability**

You will not hold Fashion Clerk responsible for other users' content, actions or inactions, or items they list. You acknowledge that we are not a traditional auctioneer. Instead, our site is venues to allow anyone to offer, sell, and buy just about anything related to the fashion industry, at anytime, from anywhere, in a variety of pricing formats and locations, fixed price formats and auction-style formats. We are not involved in the actual transaction between buyers and sellers. While we may help facilitate the resolution of disputes through various programs, we have no control over and do not guarantee the quality, safety or legality of items advertised, the truth or accuracy of users' content or listings, the ability of sellers to sell items, the ability of buyers to pay for items, or that a buyer or seller will actually complete a transaction or return an item.

We do not transfer legal ownership of items from the seller to the buyer. California Commercial Code § 2401(2) and Uniform Commercial Code § 2-401(2) applies to the transfer of ownership between the buyer and the seller, unless the buyer and the seller agree otherwise. Further, we cannot guarantee continuous or secure access to our sites, services or tools, and operation of our sites, services or tools may be interfered with by numerous factors outside of our control. Accordingly, to the extent legally permitted, we exclude all implied warranties, terms and conditions. We are not liable for any loss of money, goodwill or reputation, or any special, indirect or consequential damages arising, directly or indirectly, out of your use of or your inability to use our sites, services and tools.

Some jurisdictions do not allow the disclaimer of warranties or exclusion of damages, so such disclaimers and exclusions may not apply to you.

Regardless of the previous paragraphs, if we are found to be liable, our liability to you or to any third party is limited to the greater of (a) up to the full cost of the item (including any applicable sales tax) and its original shipping costs, (b) the total fees (under Fashion Clerk Fees and Services) you paid to us in the 12 months prior to the action giving rise to the liability, and (c) \$100.

## **Release**

If you have a dispute with one or more users, you release us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code §1542, which says: "A general release

## Fashion Clerk User Agreement

does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

### **Access and Interference**

The site contains robot exclusion headers. Much of the information on the sites is updated on a real-time basis and is proprietary or is licensed to Fashion Clerk by our users or third parties. You agree that you will not use any robot, spider, scraper or other automated means to access the sites for any purpose without our express hand written permission.

### **Additionally, you agree that you will not:**

take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure;

copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for your information) from the sites without the prior express written permission of Fashion Clerk and the appropriate third party, as applicable;

interfere or attempt to interfere with the proper working of the sites, services or tools, or any activities conducted on or with the sites, services or tools; or

bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the sites.

### **Listing Conditions**

By listing an item on Fashion Clerk's sites, you agree to pay Fashion Clerk's fees for such, if any, assume full responsibility for the content of the listing and item offered, and accept the following listing conditions: When you list an item on Fashion Clerk's sites, your listing will be posted on Fashion Clerk's sites and can be viewed in My Buying/Selling Requests. Your listing may not be immediately searchable by keyword or category for several hours (or up to 24 hours in some circumstances), so Fashion Clerk can't guarantee exact listing durations. Where your listing appears in search and browse results may be based on certain factors including listing format, title, bidding activity, end time, keywords, price and

## Fashion Clerk User Agreement

shipping cost, feedback, and detailed seller ratings. You can read more about where your listings appear in search and browse results in Fashion Clerk's Help Pages.

### **Privacy**

We do not sell or rent your personal information to third parties for their marketing purposes without your explicit consent. We use your information only as described in the Fashion Clerk Privacy Policy. We view protection of users' privacy as a very important principle. We store and process your information on computers located in the United States that are protected by physical as well as technological security devices. You can access and modify the information you provide us and choose not to receive certain communications by signing-in to your account. For a complete description of how we use and protect your personal information, see the Fashion Clerk Privacy Policy. If you object to your information being transferred or used in this way please do not use our services.

### **Indemnity**

You will indemnify and hold us (and our officers, directors, agents, subsidiaries, joint ventures and employees) harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement, or your violation of any law or the rights of a third party.

### **No Agency**

No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

### **Notices**

Except as explicitly stated otherwise, legal notices shall be served on Fashion Clerk's national registered agent (in the case of Fashion Clerk) or to the email address you provide to Fashion Clerk during the registration process (in your case). Notice shall be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to the address provided during the registration process. In such case, notice shall be deemed given three days after the date of mailing.

### **Legal Disputes**

If a dispute arises between you and Fashion Clerk, our goal is to provide you with a neutral and cost effective means of resolving the dispute quickly. Accordingly, you and Fashion Clerk agree that we will resolve any claim or controversy at law or equity that arises out of this Agreement or our services (a "Claim") in accordance with one of the subsections below or as we and you otherwise agree in writing.

## Fashion Clerk User Agreement

Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution. We will consider reasonable requests to resolve the dispute through alternative dispute resolution procedures, such as mediation or arbitration, as alternatives to litigation.

**Law and Forum for Legal Disputes** - This Agreement shall be governed in all respects by the laws of the State of California as they apply to agreements entered into and to be performed entirely within California between California residents, without regard to conflict of law provisions. You agree that any claim or dispute you may have against Fashion Clerk must be resolved exclusively by a state or federal court located in Los Angeles County, California, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You agree to submit to the personal jurisdiction of the courts located within Los Angeles County, California for the purpose of litigating all such claims or disputes.

**Arbitration Option** - For any claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, they shall initiate such arbitration through an established alternative dispute resolution ("ADR") provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**Improperly Filed Claims** - All claims you bring against Fashion Clerk must be resolved in accordance with this Legal Disputes Section. All claims filed or brought contrary to the Legal Disputes Section shall be considered improperly filed. Should you file a claim contrary to the Legal Disputes Section, Fashion Clerk may recover attorneys' fees and costs up to \$1000, provided that Fashion Clerk has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

### **Additional Terms**

Fashion Clerk may post or change certain policies from time to time. Changes take effect when we post them on the Fashion Clerk site. When using particular services on our sites, you are subject to any posted policies or rules applicable to services you use through the sites, which may be posted from time to time. All such policies or rules are hereby incorporated into this User Agreement.

### **General**

Fashion Clerk LLC's address is PO Box 2218 Beverly Hills, CA 90213. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining

## Fashion Clerk User Agreement

provisions shall be enforced. In our sole discretion, we may assign this Agreement in accordance with the Notices Section. Headings are for reference purposes only and do not limit the scope or extent of such section. Our failure to act with respect to a breach by you or others doesn't waive our right to act with respect to subsequent or similar breaches. We do not guarantee we will take action against all breaches of this Agreement.

We may amend this Agreement at any time by posting the amended terms on this site. Except as stated elsewhere, all amended terms shall automatically be effective 30 days after they are initially posted. Additionally, we will notify you through the Fashion Clerk Message Center. This Agreement may not be otherwise amended except in a writing hand signed by you and us. For purposes of this provision, "writing" doesn't include an email message and a signature doesn't include an electronic signature.

This Agreement sets forth the entire understanding and agreement between us with respect to the subject matter hereof. The following Sections survive any termination of this Agreement: Fees and Services (with respect to fees owed for our services), Release, Content, Liability, Indemnity and Legal Disputes.

In accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210.