

# Terms of Use

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Welcome to Birch Lane!

Wayfair LLC and its affiliated brands, including Wayfair.com, AllModern, Birch Lane, Joss & Main and Perigold ("Birch Lane", "Wayfair", "we" or "us") provides this and other websites (including applications and other online services that are accessible through various desktop, tablet and mobile web browsers from time to time) (collectively, "**Sites**") subject to your compliance with these Terms of Use.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THE SITES. These Terms of Use constitute an agreement between Birch Lane and you. We recommend that you print out a copy of these Terms of Use for your records.

By using the Sites, you affirm that you are able and legally competent to agree to and comply with these Terms of Use. If you do not agree to these Terms of Use or if you are not legally competent to agree to them, then you may not use the Sites.

**Please note that these Terms of Use contain provisions that govern the resolution of claims between Birch Lane and you, including an arbitration agreement, class action waiver, and jury trial waiver that affect your rights. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. Please see the [Legal Disputes](#) section for complete details and review carefully.**

## Privacy & Security

Please review our Privacy Policy, which is incorporated into these Terms of Use and also governs your use of the Sites. To the extent there is a conflict between the terms of the Privacy Policy and these Terms of Use, the Terms of Use govern.

Information security is important to Birch Lane. We have established appropriate physical, electronic and managerial safeguards to protect the information that we collect from or about our users. Birch Lane does, however, reserve the right at all times to disclose any information as Birch Lane deems necessary to satisfy any applicable law, regulation, legal process or governmental request.

Please click [here](#) for more information. [Back to Top](#)

## Changes

Birch Lane reserves the right, at any time, to change these Terms of Use, our Privacy Policy and/or the Sites. Changes, however, shall not apply retroactively to claims for which you or Birch Lane have given notice. Your use of the Sites following any such change constitutes your agreement to follow and be bound by the Terms of Use and/or Privacy Policy as revised. The revised Terms of Use and/or Privacy Policy supersede all previous versions, notices or statements regarding the Sites. If we request, you agree to sign a non-electronic version of these Terms of Use.

We will notify you of any change to these Terms of Use by any reasonable means, such as by updating the "Last Updated" date at the top of these Terms of Use. [Back to Top](#)

## Intellectual Property Rights

The Sites contain valuable trademarks and service marks owned and used by Birch Lane, including but not limited to, Birch Lane, the

Birch Lane design logo, Wayfair, Joss & Main, AllModern, Perigold, and the tag line "a zillion things home" (collectively, the "**Birch Lane Marks**"). Any use of the Birch Lane Marks without the prior written permission of Birch Lane is strictly prohibited. The arrangement and layout of the Sites, including but not limited to, the Birch Lane Marks, images, text, graphics, buttons, screenshots, music, digitally downloadable files, and other content or material (collectively, the "**Site Content**"), are the sole and exclusive property of Birch Lane.

UNAUTHORIZED COPYING, REPRODUCTION, MODIFYING, REPUBLISHING, UPLOADING, DOWNLOADING, POSTING, TRANSMITTING, MAKING DERIVATIVE WORKS OF OR DUPLICATING ALL OR ANY PART OF THE SITES IS PROHIBITED.

Birch Lane uses a network of independent product and content suppliers, distributors and other such third parties to supply some of the products and content advertised on the Sites. All other trademarks, service marks, product names, package designs and company names or logos associated with these product and content suppliers, distributors and other such third parties that are not owned by us but appear on the Sites are the property of their respective owners.

For claims of copyright infringement, please see our [Copyright Policy](#). [Back to Top](#)

## User-Generated Content

From time to time, the Sites permit the submission of content, such as comments, blogs and product reviews, generated by you and other users ("**User Content**").

You are solely responsible for your own User Content and the consequences of posting or publishing it. Any User Content or other material, information or ideas that you submit to or post or publish on the Sites is non-confidential and non-proprietary.

By submitting User Content, you represent and warrant to Birch Lane that: (i) your User Content does not violate any copyright, trademark, trade secret, patent or other intellectual property right, any right of privacy or publicity of any third party or any applicable law, rule or regulation, (ii) you own or have the legal right to use and authorize Birch Lane to use your User Content, including written consent to use of any product or the name, voice, likeness or any other applicable personal rights of each identifiable person featured or referenced in your User Content and (iii) your User Content does not violate Birch Lane's *Acceptable Use Policy* set forth below.

As between you and Birch Lane, you will retain all of your ownership rights in and to your User Content. By submitting User Content to Birch Lane, you hereby grant to Birch Lane a perpetual, worldwide, non-exclusive, irrevocable, royalty-free, sublicensable (through multiple tiers) and transferable right and license to use, reproduce, distribute, edit, modify, translate, reformat, prepare derivative works based upon, display publicly, perform publicly and otherwise exploit (including but not limited to over the Internet, broadcast television or any other uses or media) your User Content, in whole or in part, including future rights that Birch Lane (or its successor) may otherwise become entitled to that do not yet exist, as well as new uses, media, means and forms of exploitation throughout the universe exploiting current or future technology yet to be developed. You also hereby grant each user of the Sites a non-exclusive license to access your User Content through the Sites and to use, access, watch, reproduce, distribute, transmit, forward, display and perform such User Content in whole or in part, to the extent permitted by the Sites under these Terms of Use.

Birch Lane does not endorse any User Content or any opinion, recommendation, or advice expressed therein. Birch Lane reserves the right but is not obligated to monitor User Content or other content sent to or through the Sites. **Birch Lane has the right to refuse, remove, edit or delete any User Content and/or to terminate any user's access to the Sites for any reason.** Birch Lane takes no responsibility for User Content. [Back to Top](#)

## Social Media Tag Usage

BY USING #WAYFAIRATHOME, @WAYFAIR AND ANY OTHER SIMILAR SOCIAL MEDIA TAG IN ANY WAY RELATED TO ANY OF THE SITES, EACH USER AGREES TO PROVIDE WAYFAIR WITH AN UNRESTRICTED, IRREVOCABLE, ROYALTY-FREE, PERPETUAL, FULLY PAID-UP, TRANSFERABLE, WORLDWIDE LICENSE TO USE THE UPLOADED IMAGE(S) IN ANY AND ALL MARKETING MATERIALS, ON SPONSOR'S WEBSITES, AND THROUGH ALL SOCIAL MEDIA CHANNELS. EACH USER REPRESENTS AND WARRANTS THAT UPLOADED IMAGES DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED

## Acceptable Use Policy

By submitting User Content and otherwise using the Sites, you agree not to: (i) submit any User Content that is protected by or otherwise subject to any third party intellectual property or proprietary rights (including any privacy and publicity rights) unless you own or have permission from the rightful owner of such rights to post such User Content and to grant Birch Lane all of the rights granted herein; (ii) upload, post, e-mail or otherwise transmit any content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, hateful or racially, ethnically or otherwise objectionable; (iii) use the Sites to harm any person or entity, including Birch Lane; (iv) impersonate any person or entity, including but not limited to, a representative of Birch Lane, or falsely state or otherwise misrepresent your affiliation with a person or entity; (v) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content transmitted to or through the Sites; (vi) upload, post, e-mail or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail or any other form of solicitation; (vii) upload, post, e-mail or otherwise transmit any content that contains computer viruses or other computer code, files or programs that interrupt, destroy or limit the functionality of the Sites or any other computer software or hardware or telecommunications equipment; (viii) intentionally or unintentionally violate any applicable local, state, national or international laws, rules or regulations, including but not limited to those promulgated by the U.S. Federal Trade Commission, U.S. Securities and Exchange Commission; (ix) collect, store or use personal information about other users of the Sites without their consent; (x) use the Sites (including through submission of User Content) to disparage or make unsubstantiated claims about any person, third party or its/their products or services; (y) use any of the Sites in any manner that could overburden or impair any of the Sites or the networks or systems connected to the Sites; and/or (z) use any device, software or instrumentality to interfere with the proper working of the Sites or disobey any requirements, procedures, policies or regulations of networks connected to the Sites.

You also agree that you will not violate or attempt to violate the security of the Sites. Violations of system or network security may result in civil or criminal liability. Birch Lane reserves the right to investigate occurrences which may involve such violations and may involve and cooperate with, law enforcement authorities in prosecuting users who have participated in such violations. [Back to Top](#)

## Order Acceptance

The receipt of an order number or an email order confirmation does not constitute the acceptance of an order or a confirmation of an offer to sell. Birch Lane reserves the right, without prior notification, to limit the order quantity on any item and/or to refuse service to any customer. Verification of information may be required prior to the acceptance of an order. Prices and availability of products on the Sites are subject to change without notice. Errors will be corrected when discovered and Birch Lane reserves the right to revoke any stated offer and to correct any error, inaccuracy, or omission (including after an order has been submitted). Certain orders constitute improper use of the Sites and the Birch Lane Rewards Program described below. Birch Lane reserves the right, at its sole discretion, to refuse or cancel any order for any reason. Your account may also be restricted or terminated for any reason, at Birch Lane's sole discretion. Items purchased pursuant to a quantity discount may be re-priced upon cancellation. [Back to Top](#)

## About Our Prices

Where a product listing on our Site references a higher price, typically denoted by a strikethrough (e.g. "~~\$549~~"), such higher price represents the highest price at which we offered or sold the product at some point in the past. For "Flash Deals", where a product is temporarily being sold at a reduced price, an additional strikethrough price is presented that represents a recent previous price before the Flash Deal promotion. The "Sale" tag on a product listing on our Site signifies that we are selling the product at a discount from a price in the previous 90 days.

When we use the term "Closeout," we mean either that the product has been permanently reduced and will not return to the original price or that the product is temporarily being sold at a reduced price in order to clear an overstock of either Wayfair or supplier

inventory. Prices of products listed on our Site as "Closeout" may fluctuate during the "Closeout" promotion period for such products. For temporary "Closeout" pricing, such products may return to prices that are equal to or greater than their original prices upon expiration of the applicable "Closeout" promotion period.

We do not price match. Promotional codes can only be applied during purchase. Customer Service will be unable to honor any promotional code adjustments post-order. [Back to Top](#)

## Birch Lane Rewards Program

The Birch Lane Rewards Program (the "**Rewards Program**") is exclusively for users of the Sites who have registered for the Rewards Program in accordance with the directions set forth below and on the Sites. Rewards Dollars may be applied to future purchases at the Participating Sites in accordance with these Terms of Use. Please click [here](#) for complete Rewards Program details, as may be in effect from time to time and which are incorporated herein by reference. [Back to Top](#)

## Links to Other Websites

The Sites may contain links to third-party websites ("**Other Sites**") that are not under Birch Lane's control. Birch Lane makes no claim and accepts no responsibility regarding the quality, nature or reliability of the Other Sites that are accessible by hyperlinks from the Sites or link to the Sites. Birch Lane provides these links to you as a convenience and the inclusion of any link does not imply endorsement by Birch Lane of Other Sites or any association with the operators of such Other Sites. You are responsible for viewing and abiding by the privacy statements and terms of use posted at any third-party sites. [Back to Top](#)

## Mobile Devices, SMS, and Mobile Applications

If you use a mobile device to access pages of the Sites optimized for mobile-viewing, opt in to receive SMS (text messages) from Wayfair (as/when available), or use a mobile application, the following additional terms and conditions ("**Mobile Terms**") also apply to you. Your access to the Sites via your mobile device or use of a mobile application confirms your agreement to these Mobile Terms, as well as the rest of the Terms of Use.

By opting in, you agree to receive promotional SMS text messages on your mobile device, message frequency varies. Our SMS text messaging programs may include promotional messages (84047), shopping cart reminders (84047), order updates (76069), and authentication texts (76069). Your consent is not required as a condition of purchasing any goods or services from Wayfair. You can opt out at any time and for any reason by following provided instructions or by texting "STOP" to the number associated with the SMS message. You will receive one further message confirming you are unsubscribed. After this, you will no longer receive SMS messages from Wayfair. If you wish to join again, you can opt in at any time. If you have any questions or require further assistance you may respond "HELP" to the number associated with the SMS message. For more information please contact us by emailing [support@wayfair.com](mailto:support@wayfair.com) (please reference "Questions about SMS").

By agreeing to receive SMS messages from Wayfair, you certify that you are over 18 years of age and (a) you are the mobile account holder or (b) you have the account holder's permission to enroll the designated mobile phone number and understand that message and data rates may apply. You agree that you are solely responsible for all message and data charges that apply to use of your mobile device to access the Sites or use of a mobile application. All such charges are billed by and payable to your mobile service provider. Please contact your participating mobile service provider for pricing plans, participation status and details. Carriers are not liable for delivered or undelivered content. You understand that wireless through Wi-Fi or a participating mobile service provider may not be available in all areas at all times and may be affected by product, software, coverage or other service changes made by your mobile service provider or otherwise. Additional terms and conditions may apply to your use of a mobile application, based on the type of mobile device on which you install and use the mobile application. [Back to Top](#)

# Notice to California Residents

California Proposition 65 requires that special warnings be provided when products contain chemicals known by the State of California to cause cancer, birth defects, or other reproductive harm if the use of those products may cause exposure to those chemicals above specific limits. These warnings relate to some but not all tools, lead crystal glassware, ceramic tableware, tiffany style lamps, and electrical cords. Please call us prior to ordering if you have any questions regarding the safety of these products.

Pursuant to California Civil Code Section 1789.3, Birch Lane provides users of the Sites with the following notice: You may report complaints to the Consumer Information Division of the California Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at 800-952-5210. [Back to Top](#)

## Communications with Birch Lane

For all communications made to or with Birch Lane, including but not limited to feedback, questions, comments, suggestions and the like: (i) you will have no right to confidentiality in your communications and Birch Lane will have no obligation to protect your communications from disclosure; (ii) Birch Lane will be free to reproduce, use, disclose and distribute your communications to others without limitation; and (iii) Birch Lane will be free to use any ideas, concepts, know-how, content or techniques contained in your communications for any purpose whatsoever, including, but not limited to, the development, production and marketing of products and services that incorporate such information. [Back to Top](#)

## Indemnity

You agree to indemnify and hold Wayfair and its agents and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of (i) your use of the Sites, including any User Content you submit, post to or transmit through the Sites, (ii) your violation of these Terms of Use or (iii) your violation of any rights of another user. [Back to](#)

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## Disclaimer of Warranties

Wayfair intends for the information and data contained in the Sites to be accurate and reliable but since the information and data have been compiled from a variety of sources, they are provided 'AS IS' and "AS AVAILABLE". You expressly agree that your use of the Sites and any information contained therein is at your sole risk. Accordingly, to the extent permitted by applicable law, WAYFAIR EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES AND CONDITIONS OF TITLE, NON-INFRINGEMENT, ACCURACY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES AND CONDITIONS THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. Some jurisdictions do not allow the disclaimer of warranties or conditions so such disclaimers may not apply to you. [Back to](#)

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## Limitation on Liability

IN NO EVENT WILL WAYFAIR OR ITS OFFICERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS, SUCCESSORS, SUBSIDIARIES, DISTRIBUTORS, AFFILIATES OR THIRD PARTIES PROVIDING INFORMATION ON THIS SITE OR VIA OTHER CHANNELS, INCLUDING BUT NOT LIMITED TO PHONE AND EMAIL, BE LIABLE TO ANY USER OF THE SITES OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE) ARISING OUT OF THE USE OR INABILITY TO USE THE SITES OR

ANY INFORMATION CONTAINED THEREIN, INCLUDING USER CONTENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, OR OTHERWISE, EVEN IF WAYFAIR HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

You hereby acknowledge that the preceding limitation on liability will apply to all content, merchandise and services available through the Sites or other channels. Because some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such jurisdictions liability is limited to the fullest extent permitted by law. Regardless of the previous paragraphs, if Wayfair is found to be liable, our liability to you or to any third party is limited to the greater of (a) the amount in dispute not to exceed the total amount which you paid to us in the twelve (12) months prior to the action giving rise to the liability or (b) USD \$100.

**IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY LAW, YOU MUST PROVIDE NOTICE TO WAYFAIR OR BIRCH LANE, PURSUANT TO THE PROCESS REFERENCED BELOW, OF ANY CLAIM WITHIN ONE YEAR OF ITS ACCRUAL OR YOUR CLAIM IS WAIVED AND TIME-BARRED.** [Back to Top](#)

## Legal Disputes

**PLEASE READ THIS SECTION CAREFULLY. EXCEPT AS THE TERMS OF USE OTHERWISE PROVIDE, YOU WAIVE YOUR RIGHTS TO TRY ANY CLAIM IN COURT BEFORE A JUDGE OR JURY AND TO BRING OR PARTICIPATE IN ANY CLASS, COLLECTIVE, OR OTHER REPRESENTATIVE ACTION. Other rights that you would have if you went to court, such as access to discovery or appeals, also might be unavailable or limited in arbitration.**

## Agreement to Binding Arbitration; Class Action Waiver

**Any dispute, claim or controversy (that is not resolved informally as set forth below) between you and Wayfair or Birch Lane, its agents, employees, officers, directors, principals, successors, assigns, subsidiaries or affiliates (collectively for purposes of this section, "Wayfair") arising from or relating in any way to: (1) these Terms of Use and their interpretation or the breach, termination or validity thereof, and the relationships which result from these Terms of Use; (2) your use of any website owned or operated by Wayfair and its affiliated brands; or (3) any products or services sold or distributed by Wayfair and its affiliated brands or through any website owned or operated by Wayfair and its affiliated brands (collectively, "Covered Disputes") will be resolved by binding arbitration, rather than in court. Covered Disputes shall be interpreted broadly.**

## Mandatory Informal Dispute Resolution

Wayfair values its customers and seeks to resolve disputes informally where possible. Before formally pursuing a Covered Dispute in arbitration, you agree to first send a detailed notice ("Notice") to Wayfair by email at [legal@wayfair.com](mailto:legal@wayfair.com). If Wayfair has a dispute with you, Wayfair agrees to first send a detailed Notice to your e-mail address on file with us. Your Notice must contain all of the following information: (1) your full name; (2) your address, telephone number, and email address; (3) information sufficient for Wayfair to identify any transaction at issue (e.g., your order number, order confirmation communication, etc.); and (4) a detailed description of your dispute, the nature and basis of your claim(s), and the nature and basis of the relief you are seeking with a calculation for it. You must personally sign this Notice. Wayfair's Notice will likewise set forth (1) information sufficient for you to identify any transaction at issue and (2) a detailed description of our dispute, the nature and basis of our claim(s), and the nature and basis of the relief we are seeking with a calculation for it. You and Wayfair agree to negotiate in good faith about the dispute in an effort to swiftly resolve it to your satisfaction without the need for a formal proceeding. Should Wayfair request a telephone conference with you in an effort to resolve your dispute as part of this informal process, you agree to personally participate (with your counsel if you are represented). This process should result in resolution of the dispute, but if for some reason it is not resolved within 60 days after receipt of a fully completed Notice and the parties have not agreed to extend this time period, you or Wayfair may initiate an arbitration. Compliance

with and completion of this mandatory informal dispute resolution process is a condition precedent to filing any demand for arbitration. The statute of limitations and any filing fee deadlines shall be tolled while the parties engage in this process. Unless prohibited by applicable law, the arbitration administrator shall not accept or administer any demand for arbitration unless the claimant has certified in writing that they have fully complied with this process. This certification shall be personally signed by you or Wayfair. A court shall have the authority to enjoin the filing or prosecution of arbitrations without first providing a fully completed Notice and participating in good faith in this informal dispute resolution process.

## Initiating Arbitration and Arbitration Rules

Any arbitration between you and Wayfair shall be administered by National Arbitration and Mediation (“NAM”) in accordance with NAM’s operative Comprehensive Dispute Resolution Rules and Procedures (the “NAM Rules”) in effect at the time any demand for arbitration is filed with NAM, as modified by this Legal Disputes Section. For a copy of the NAM Rules, please visit <https://www.namadr.com/resources/rules-fees-forms> or contact NAM at NAM’s National Processing Center at 990 Stewart Avenue, 1st Floor, Garden City, NY 11530 and email address [commercial@namadr.com](mailto:commercial@namadr.com). If NAM is unavailable or unwilling to administer the proceeding under the Legal Disputes Section as written, the parties agree that the arbitration shall be administered by the American Arbitration Association (“AAA”) pursuant to the AAA Consumer Arbitration Rules and the Consumer Due Process Protocol (collectively, “AAA Rules”) in effect at the time any demand for arbitration is filed with AAA, as modified by this Legal Disputes Section. If the AAA is unavailable or unwilling to apply this Legal Disputes Section as written, the parties shall mutually agree on an alternative administrator that will administer the proceeding under the Legal Disputes Section as written. If the parties are unable to agree, they will petition a court of competent jurisdiction to appoint an arbitration administrator that will do so. Any arbitration will be held before a single neutral arbitrator.

To begin an arbitration proceeding, you must send the demand for arbitration or arbitration notice form made available from the arbitration administrator and supplement that form with a detailed description of your claim, including with the information required for your Notice and the accompanying signed certification of compliance with the informal process referenced above (collectively referred to as “demand for arbitration”), to NAM (or to AAA if it is the administrator as set forth above). You must personally sign your demand for arbitration. You agree to also send Wayfair a copy of your demand for arbitration at [legal@wayfair.com](mailto:legal@wayfair.com). If Wayfair initiates arbitration, we will send a copy of our demand for arbitration to your email address on file with us.

You may choose to have the arbitration conducted by telephone, virtually, based on written submissions, or in person in the county where you live or at another location reasonably convenient for you, or at a mutually agreed-upon location. Wayfair reserves the right to request an in-person or videoconference hearing at any point within 14 days after its deadline to file any answer. After that time, Wayfair retains the right to request an in-person or virtual hearing from the arbitrator, which the arbitrator may elect to require along with your participation (with your counsel if you are represented). Should a hearing take place in person, it shall take place consistent with the geographic parameters set forth above.

## Arbitration Fees

Payment of all filing, administration and arbitrator fees will be governed by the NAM Rules (or the AAA Rules should AAA be the designated administrator as set forth above). Upon a showing of financial hardship, Wayfair will consider your request to promptly reimburse your portion of the arbitration fees provided for in the NAM (or AAA) Rules.

## Arbitrator Authority

**The arbitrator has the sole authority to and shall address all claims or arguments by both parties concerning the formation, legality, and enforceability of this arbitration clause, the scope of this clause, and the arbitrability of any claim or issue arising between us.**

There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages) only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator may not award relief for or against anyone who is not a party to the proceeding. The arbitrator is bound by and must follow the terms of these Terms of Use as a court would. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to address the essential findings and conclusions of law on which the award is based. The arbitration award shall be binding only between you and Wayfair and shall have no preclusive effect in any other arbitration or proceeding involving a different party, provided that the arbitrator may consider rulings in other arbitrations involving different individuals. The arbitrator may award fees and costs as provided by the NAM Rules (or the AAA Rules if AAA is the designated administrator as set forth above) or to the extent such fees and costs could be awarded in court or if the arbitrator determines that a claim, proceeding, or defense was frivolous or brought for harassment, for an improper purpose, or in bad faith. The arbitrator shall apply the provisions of Federal Rule of Civil Procedure 68 after entry of the award.

## **Sole Exceptions to Arbitration**

Notwithstanding the foregoing, in lieu of arbitration: (1) either you or Wayfair may elect to have an individual claim heard in small claims court consistent with any applicable jurisdictional and monetary limits that may apply, provided that it is brought and maintained as an individual claim and is not appealed or removed to any court of general jurisdiction; and (2) you agree that you or Wayfair may bring suit in court to enjoin infringement or other misuse of intellectual property rights.

## **Jury Trial and Class Action Waiver**

**Except as the Terms of Use otherwise provide and to the fullest extent permitted by law, you and Wayfair acknowledge and agree that you are each waiving the right to a trial by jury and to the litigation of disputes in state or federal courts of general jurisdiction. The parties further agree that any arbitration shall be conducted in their individual capacities only and not as a class action/class arbitration or other representative action, and the parties expressly waive their right to file a class action or seek relief on a class basis. You and Wayfair may not be plaintiffs or class members in any purported class, collective, private attorney general, or representative proceeding, or otherwise make or proceed with any claim on a collective or consolidated basis, and may each bring claims against the other only in your or its individual capacity. As referenced above, the arbitrator may award declaratory or injunctive relief only on an individual basis and only to the extent necessary to provide relief warranted by the individual claim. If a court determines that this class action waiver is not enforceable as to a particular claim or request for relief and all appeals from that decision have been exhausted (or the decision is otherwise final), then the parties agree that that particular claim or request for relief shall proceed in court but shall be stayed pending arbitration of the remaining claims.**

## **Special Additional Procedures for Mass Arbitration**

If 25 or more individuals seek to initiate arbitrations with Wayfair raising similar claims, and counsel for the individuals bringing the claims are the same or coordinated or the claims are otherwise coordinated ("Mass Claims"), you and Wayfair agree that these additional procedures shall apply, along with the applicable NAM Rules (or the applicable AAA Rules if AAA is the administrator as set forth above). You understand and agree that if you choose to initiate your claim as part of Mass Claims, the adjudication of your claim might be delayed. Counsel for the individuals and counsel for Wayfair shall each select 15 cases (per side) to be filed in and proceed in arbitration in bellwether proceedings to be resolved individually. Each case shall be assigned to a separate and different arbitrator. In the meantime, no other cases may be filed or deemed filed in arbitration, and the arbitration administrator shall not accept or administer arbitrations commenced in violation of these procedures. If the parties are unable to resolve the remaining cases after the conclusion of the first stage of bellwether proceedings, each side may select another 15 cases (per side) to be filed in and proceed in arbitration in a second set of bellwether proceedings to be resolved individually. Each case shall be assigned to a separate and



different arbitrator. This process shall continue consistent with this staged process of administering and moving forward a maximum of 30 individual arbitration proceedings at a time until the parties are able to resolve all of the Mass Claims, either through settlement or arbitration. If these additional mass arbitration procedures apply to your claim, any applicable statute of limitations shall be tolled from the time the first cases are selected for a bellwether proceeding until your claim is selected for a bellwether proceeding, withdrawn, or otherwise resolved. A court shall have the authority to enforce these mass arbitration procedures and, if necessary, to enjoin the filing or prosecution of arbitrations.

## Governing Law

You and Wayfair agree that any claim between us involves commerce under, and is governed exclusively by, the Federal Arbitration Act ("FAA") and federal law, and not by any state or local laws, or the laws of other countries, concerning or purporting to place limits on the availability or scope of arbitration or in any way imposing requirements beyond or inconsistent with those set forth in the FAA. Where otherwise applicable, the laws of the Commonwealth of Massachusetts apply. Should any action proceed in court (other than in small claims court), you consent to the exclusive jurisdiction of the federal and state courts of the Commonwealth of Massachusetts.

## Other

To the extent that any other provision of the Terms of Use is found to be inconsistent with rights, duties, and requirements of this arbitration agreement, or where the application of such a provision would change or render unenforceable any part of this arbitration agreement, such provision shall be null and void and the terms of this arbitration agreement shall control. [Back to Top](#)

## Termination

Your ability to access and use the Sites remains in effect until terminated in accordance with these Terms of Use. You agree that Birch Lane, in its sole discretion, may terminate your account and your use of the Sites and may remove and delete your User Content if Birch Lane believes that you have violated or acted inconsistently with these Terms of Use or for any other reason. Birch Lane also may in its sole discretion and at any time discontinue providing the Sites, or any part thereof, with or without notice. You agree that any termination of your access to the Sites may be effected without prior notice and you acknowledge and agree that Birch Lane may bar any further access to the Sites. Further, you agree that Birch Lane will not be liable to you or any third-party for any termination of access to the Sites.

For instructions for deleting your account, please see the "Registering for the Service" section of our Privacy Policy.

The provisions of the Intellectual Property Rights, User-Generated Content, Acceptable Use Policy, Disclaimer of Warranties, Indemnity, Limitation of Liability, Legal Dispute sections, together with and any other rights and obligations which by their nature are reasonably intended to survive such termination, will survive any termination of these Terms of Use. [Back to Top](#)

## Right to Access

YOU MUST BE AT LEAST AGE 13 TO USE THE SITES. By using the Sites, you affirm that you are over age 13. If you are under age 13, you may not access or use the Sites.

IF YOU ARE A PARENT OR GUARDIAN THAT PROVIDES CONSENT TO YOUR TEENAGER'S REGISTRATION WITH AND USE OF THE SITES, YOU AGREE TO BE BOUND BY THESE TERMS IN RESPECT OF SUCH TEENAGER'S USE OF THE SITES. [Back to Top](#)

## Outages

Birch Lane periodically schedules system downtime for the Sites for maintenance and other purposes. Unplanned system outages also may occur. You agree that Birch Lane has no responsibility and is not liable for: (a) the unavailability of any of the Sites; (b) any loss of data, information or materials caused by such system outages; (c) the resultant delay, mis-delivery or non-delivery of data, information or materials caused by such system outages; or (d) any outages caused by any third parties, including without limitation any companies or servers hosting any of the Sites, any Internet service providers or otherwise. [Back to Top](#)

## Jurisdictional Issues

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## General Information

No waiver of any provision or any breach of this Agreement will constitute a waiver of any other provisions or any other or further breach. In the event that any provision of this Agreement is determined to be illegal or unenforceable, the balance of the Agreement shall continue to be fully valid, binding, and enforceable. These Terms of Use set forth the entire Agreement between you and Wayfair with respect to use of the Sites and supersede any prior agreements between you and Wayfair relating to such subject matter. The Terms are not assignable, transferable or sublicensable by you except with Wayfair's prior written consent. No waiver by either party of any breach or default hereunder will be deemed to be a waiver of any preceding or subsequent breach or default. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms of Use. Any heading, caption or section title contained herein is inserted only as a matter of convenience and in no way defines or explains any section or provision hereof. Wayfair's performance of these Terms of Use is subject to existing laws and legal process, and nothing contained in these Terms of Use is in derogation of Wayfair's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Sites or information provided to or gathered by Wayfair with respect to such use. A printed version of these Terms of Use and of any notices given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. The parties agree that all correspondence relating to these Terms of Use must be written in the English language. [Back to Top](#)

## Violations

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## Questions?

If you have questions, comments or complaints about these Terms or the Sites, please contact us [here](#). (please reference "Questions about the Sites").

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