

Terms of Use

PLEASE READ THESE TERMS OF USE (THESE "TERMS OF USE") CAREFULLY. THESE TERMS OF USE GOVERN YOUR ACCESS TO AND USE OF ALL OR PART OF ANY WEBSITE OR MOBILE APPLICATION OF PATIOFURNITURE.COM AND ANY OTHER SITE, MOBILE APPLICATION OR ONLINE SERVICE WHERE THESE TERMS OF USE ARE POSTED (COLLECTIVELY, THE "SITE"). THESE TERMS OF USE DO NOT AMEND ANY OTHER AGREEMENT YOU MAY HAVE WITH PATIOFURNITURE.COM FOR PRODUCTS OR SERVICES.

ARBITRATION NOTICE: These Terms of Use contain a binding dispute resolution/arbitration agreement including a waiver of any right to participate in a class action lawsuit or class-wide arbitration that is set forth below.

- 1. Changes to Terms/Site.** We reserve the right to modify or amend these Terms of Use, as well as any aspect of the Site, at any time. All changes will be effective immediately upon posting to the Site. By accessing or using the Site after changes are posted, you agree to and accept those changes.
- 2. Third-Party Web Sites.** The Site may link to, or be linked to, websites not maintained or controlled by PATIOFURNITURE.COM. Those links are provided as a convenience, and PATIOFURNITURE.COM is not responsible for examining or evaluating the content or accuracy of, and does not warrant or endorse, any third-party web site or any products or services made available through those web sites. Please take care when leaving the Site to visit a third-party web site. You should read the terms of use and privacy policy for each web site that you visit.
- 3. Intellectual Property Rights.** The Site, including its text, audio, video, graphics, charts, photographs, interfaces, icons, other content, software, computer code, data, trademarks, logos, slogans, names of products and services, documentation, other components, and the design, selection, and arrangement of content is exclusively the property of PATIOFURNITURE.COM or, as applicable, its suppliers and licensors, and is protected by copyright, trademark, and other intellectual property laws. Any unauthorized use of any trademarks, trade dress, or any other intellectual property belonging to PATIOFURNITURE.COM or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law. The Site may contain references to third-party marks and copies of third-party copyrighted materials, which are the property of their respective owners. All rights not expressly granted herein are reserved by PATIOFURNITURE.COM and its licensors.
- 4. Use of the Site; Compliance.** You may download and print one copy of the Site's visible content for your personal and noncommercial use, provided you do not modify or delete any copyright, trademark, or other proprietary notices. You may not otherwise copy, reproduce, display, duplicate, sell, publish, post, license, distribute, or create derivative works of the Site or any part of the Site without the prior written consent of PATIOFURNITURE.COM. For example, you may not copy, reproduce, publish, upload to another web site, or otherwise distribute any of the images on the Site. You may not

use the Site for unlawful purposes. You may not access, use, or copy any portion of the Site or its content through the use of indexing agents, spiders, scrapers, bots, web crawlers, or other automated devices or mechanisms. User activities that aim to render the Site or associated services inoperable or to make their use more difficult are forbidden. You are responsible for complying with all local, state, and federal laws and regulations that apply to your use of the Site. You may not upload to, distribute or otherwise publish through the Site any content that (i) is confidential, proprietary, false, fraudulent, libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, infringing on intellectual property rights, abusive, illegal or otherwise objectionable; (ii) may constitute or encourage a criminal offense, violate the rights of any party or otherwise give rise to liability or violate any law; or (iii) may contain software viruses, political campaigning, chain letters, mass mailings, or any form of "spam." You may not use a false email address or other identifying information, impersonate any person or entity or otherwise mislead as to the origin of any content. You may not upload commercial content onto the Site. Some features on the Site may require registration. By registering at and in consideration of your use of the Site you agree to provide true, accurate, current and complete information about yourself. Some features on the Site may require use of a password. You are responsible for protecting your password. You agree that you will be responsible for any and all statements made, and acts or omissions that occur, through the use of your password. If you have any reason to believe or become aware of any loss, theft or unauthorized use of your password, you agree to notify PATIOFURNITURE.COM immediately at customerservice@patiofurniture.com. PATIOFURNITURE.COM may terminate your account and suspend your use of the Site for any reason without prior notice to you, including but not limited to if PATIOFURNITURE.COM suspects that your account is being used in an unauthorized manner or that you are in violation of these Terms of Use.

5. **Feedback.** PATIOFURNITURE.COM welcomes comments regarding the Site, including any products or services available through the Site ("Feedback"). If you submit any Feedback to us regarding the Site, you are granting to PATIOFURNITURE.COM a royalty-free, perpetual, irrevocable, worldwide, unlimited, nonexclusive license to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display (publicly or otherwise) such Feedback, in any medium or format, and that such Feedback will not be considered or maintained as confidential. We may use any feedback that you send us in our discretion and without attribution or compensation to you.
6. **Privacy.** Your use of the Site is subject to our [Privacy Notice](#). You may obtain a copy of our Privacy Notice by clicking [here](#).
7. **Purchase Information.** If you submit payment information that is incorrect or invalid, your payment will not be processed. We have no responsibility or liability if your payment method is declined by your financial institution or any third party financing company. Payments are processed by our third-party payment processor. Refunds, if available, are solely the responsibility of PATIOFURNITURE.COM and are at PATIOFURNITURE.COM's sole discretion.

8. **Merchandise Availability.** The prices and availability of merchandise on the Site may change at any time without notice to you. Merchandise prices and selection may vary from region to region and differ between the Site and stores. Availability of merchandise may be limited and merchandise may not be available for immediate delivery.

9. **NO WARRANTY.**

- A. SOME MERCHANDISE SOLD VIA THE SITE COMES WITH A LIMITED PRODUCT WARRANTY. SEE OUR "Online [Terms and Conditions of Sale, Limited Product Warranty, and Dispute Resolution/Arbitration Agreement](#)" FOR WARRANTY DETAILS.
- B. THE SITE IS PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT ANY WARRANTY OF ANY KIND. ACCURACY OF INFORMATION ON THE SITE CANNOT BE GUARANTEED. PATIOFURNITURE.COM DOES NOT GUARANTEE THE QUALITY, COMPLETENESS, TIMELINESS, OR AVAILABILITY OF THE SITE. PATIOFURNITURE.COM DOES NOT WARRANT THAT THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY DEFECTS IN THE SITE WILL BE CORRECTED, OR THAT THE SITE OR THE SERVERS THAT MAKE THE SITE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL CONDITIONS OR COMPONENTS.
- C. PATIOFURNITURE.COM IS NOT RESPONSIBLE FOR ANY TYPOGRAPHICAL ERRORS ON THE SITE. WE RESERVE THE RIGHT TO REVOKE ANY STATED OFFER AND TO CORRECT ANY ERRORS, INACCURACIES OR OMISSIONS INCLUDING AFTER AN ORDER HAS BEEN SUBMITTED AND WHETHER OR NOT THE ORDER HAS BEEN CONFIRMED AND YOUR CREDIT CARD CHARGED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PATIOFURNITURE.COM EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SITE, INCLUDING WITHOUT LIMITATION THOSE REGARDING AVAILABILITY, QUALITY, ACCURACY, FITNESS FOR ANY USE OR PURPOSE, COMPATIBILITY WITH ANY STANDARDS OR USER REQUIREMENTS, TITLE, AND NONINFRINGEMENT. IN CERTAIN JURISDICTIONS, THE LAW MAY NOT PERMIT THE DISCLAIMER OF WARRANTIES, SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU.
- D. PATIOFURNITURE.COM HAS NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY USER COMMUNICATION. YOUR USE OF THE SITE IS AT YOUR OWN RISK AND YOU ALONE ARE RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER HARDWARE, SOFTWARE, SYSTEMS, AND NETWORKS, ANY LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY INFORMATION FROM THE SITE, AND FOR ANY OTHER DAMAGE THAT MAY BE INCURRED. WE MAKE NO

REPRESENTATION THAT THE SITE IS APPROPRIATE OR AVAILABLE FOR USE IN LOCATIONS OTHER THAN THE UNITED STATES. IF YOU CHOOSE TO ACCESS THE SITE FROM LOCATIONS OTHER THAN THE UNITED STATES, YOU DO SO AT YOUR OWN RISK AND YOU ARE RESPONSIBLE FOR COMPLYING WITH APPLICABLE LAWS AND REGULATIONS. NO ADVICE OR INFORMATION, ORAL OR WRITTEN, OBTAINED BY YOU FROM PATIOFURNITURE.COM OR IN ANY MANNER FROM THE SITE CREATES ANY WARRANTY.

10. NO LIABILITY.

- A. IN NO EVENT WILL PATIOFURNITURE.COM OR ANY OF ITS PARENTS, SUBSIDIARIES, DIVISIONS, SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, LICENSORS, PREDECESSORS, SUCCESSORS, OR ASSIGNS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, OR ANY OTHER LOSS OR DAMAGE OF ANY KIND, ARISING OUT OF OR IN CONNECTION WITH THE SITE OR YOUR USE OF THE SITE (INCLUDING, WITHOUT LIMITATION, THE INPUT OF PERSONALLY IDENTIFIABLE AND OTHER INFORMATION INTO THE SITE), WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF PATIOFURNITURE.COM HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE LOSS OR DAMAGE. YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE SITE.
- B. WITHOUT LIMITING THE FOREGOING, IF PATIOFURNITURE.COM IS FOUND LIABLE TO YOU OR TO ANY THIRD PARTY AS A RESULT OF ANY CLAIMS OR OTHER MATTERS ARISING OUT OF OR IN CONNECTION WITH THE SITE OR THESE TERMS OF USE, THE MAXIMUM LIABILITY FOR ALL OF THOSE CLAIMS AND OTHER MATTERS WILL NOT EXCEED \$100, EVEN IF THIS REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- C. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU. IF PURSUANT TO APPLICABLE STATE LAW, THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IS NOT PERMITTED, THE LIABILITY OF PATIOFURNITURE.COM, THIRD PARTY CONTENT PROVIDERS, AND THEIR RESPECTIVE AGENTS, SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. IF NEW JERSEY LAW APPLIES, EXCLUSIONS AND LIMITATIONS OF LIABILITY FOR INTENTIONAL OR RECKLESS ACTS, GROSS NEGLIGENCE, NEGLIGENCE, AND STRICT LIABILITY DO NOT APPLY.

11. **Indemnification.** You agree to indemnify, defend, and hold harmless PATIOFURNITURE.COM, and each of its parents, subsidiaries, shareholders, members, directors, officers, employees, representatives, consultants, agents, suppliers, licensors, predecessors, successors and assigns, from and against all losses, claims, liabilities, demands, complaints, actions, damages, judgments, settlements, fines, penalties, damages, expenses, and costs (including, without limitation, reasonable attorneys' fees and costs) that arise out of or in connection with your access to or use of the Site, your misuse of any material, data, or other information downloaded or otherwise obtained from the Site, your order of merchandise through the Site, or your violation of these Terms of Use. We reserve, and you grant to us, the exclusive right to assume the defense and control of any matter subject to indemnification by you, in which event you will assist and cooperate with PATIOFURNITURE.COM in asserting any available defenses. This provision does not apply to intentional or reckless acts or gross negligence on the part of PATIOFURNITURE.COM. If New Jersey law applies, this provision also does not apply to negligence or strict liability on the part of PATIOFURNITURE.COM.
12. **Copyright.** PATIOFURNITURE.COM asks that its users respect the rights of intellectual property owners. If you believe that your work has been copied on the Site in a way that constitutes infringement, you agree to provide PATIOFURNITURE.COM the following information in the form prescribed by Section 512 of Title 17, United States Code:
- A. A description of the copyrighted work or works that you claim have been infringed;
 - B. A description of the allegedly infringing material, including its location on the Site;
 - C. Your address, telephone number, and email address;
 - D. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
 - E. A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf; and
 - F. An electronic or physical signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

PatioFurniture.com's Copyright Agent for notice of claims of copyright infringement on the Site is: copyrightagent@patiofurniture.com; Copyright Agent, PatioFurniture.com Customer Support, P.O. Box 468431, Perimeter Center, 4707 Ashford Dunwoody Road, Atlanta, GA 30338.

13. **Linking to the Site.** If you operate a web site and are interested in linking to the Site: you agree that (i) the link must be clearly marked; (ii) the link and its use must be in connection with a web site of appropriate subject matter; (iii) the link and its use must not, nor have the potential to, damage or dilute the goodwill associated with PATIOFURNITURE.COM's names and trademarks; (iv) the link and its use must not create the false appearance that any program, person, or entity is associated with or sponsored by PATIOFURNITURE.COM; and (v) the link, when activated by a user, must display the Site full-screen and not within a "frame." PATIOFURNITURE.COM

reserves the right to revoke consent to link to the Site at any time in its sole discretion, either by amending these Terms of Use or through other notice.

14. **Governing Law.** These Terms of Use are governed by the laws of the State of Florida, without regard to its conflict of law principles, except to the extent that the Federal Arbitration Act governs the Dispute Resolution/Arbitration Agreement, as stated below. The United Nations Convention for the International Sale of Goods does not apply.

15. **Dispute Resolution/Arbitration Agreement.**

- A. *Mandatory Arbitration.* YOU AND PATIOFURNITURE.COM AGREE THAT ANY DISPUTE OR CLAIM BETWEEN YOU AND PATIOFURNITURE.COM OR ANY AFFILIATE OF PATIOFURNITURE.COM OR ANY OF THEIR PARENT COMPANIES, SUBSIDIARIES, DIVISIONS, SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, PREDECESSORS, SUCCESSORS, OR ASSIGNS, INCLUDING BUT NOT LIMITED TO ANY DISPUTE OR CLAIM THAT RELATES IN ANY WAY TO ANY PRODUCT OR SERVICE SOLD OR DISTRIBUTED BY PATIOFURNITURE.COM, TO ANY TRANSACTION WITH PATIOFURNITURE.COM, TO ANY WARRANTY, TO THE TERMS AND CONDITIONS OF SALE, TO THE FINANCING OF ANY PURCHASE FROM PATIOFURNITURE.COM, TO THE COLLECTION OR STORAGE OF PERSONAL INFORMATION, OR TO THE TERMS OF USE, INCLUDING DISPUTES OR CLAIMS UNDER FEDERAL OR STATE STATUTES OR TORT LAW ("DISPUTE") MUST BE RESOLVED EXCLUSIVELY THROUGH FINAL AND BINDING ARBITRATION, AND NOT BY A COURT OR JURY, EXCEPT THAT YOU OR PATIOFURNITURE.COM MAY ASSERT CLAIMS IN SMALL CLAIMS COURT IF THE CLAIMS QUALIFY FOR SMALL CLAIMS COURT AND THE MATTER PROCEEDS ONLY ON AN INDIVIDUAL (NOT A CLASS OR REPRESENTATIVE) BASIS.

You and PATIOFURNITURE.COM waive the right to a trial by jury and any right to have a Dispute heard in court. In arbitration, Disputes are resolved by a neutral arbitrator instead of a judge or jury, discovery is more limited than in court, and the arbitrator's decision is subject to limited review by courts. The arbitrator can award on an individual basis the same damages and relief as a court, including monetary damages, injunctive relief, and declaratory relief. Judgment on the arbitrator's award may be entered in any court having jurisdiction thereof. A single arbitrator with the American Arbitration Association ("AAA") will conduct the arbitration, and the award may not exceed the relief allowed by applicable law. The arbitration will be conducted in the county of your residence or another mutually agreed location. The AAA's Consumer Arbitration Rules will apply. If AAA will not apply those rules, then AAA's Commercial Arbitration Rules will apply. The AAA's rules and a form that can be used to initiate arbitration proceedings are available at <http://www.adr.org>. You and PATIOFURNITURE.COM agree that if for any reason AAA will not conduct or becomes unavailable to conduct the arbitration, then a court may appoint a substitute arbitrator, and further agree that the choice of AAA as a forum is not

integral to the Agreement.

The Federal Arbitration Act ("FAA") applies to this Agreement and governs its interpretation and enforcement. The arbitrator will decide all issues relating to the enforceability, interpretation, scope, and application of this Agreement (including "gateway" issues of arbitrability), these Terms of Use, the Online [Terms and Conditions of Sale](#), and any applicable warranty, except that a court will resolve any question regarding the meaning, validity or enforceability of Section B of this Agreement. The term "Dispute" and the requirement to arbitrate will be broadly interpreted. The Agreement will survive termination of any warranty.

- B. *Arbitration Class Action Waiver.* You and PATIOFURNITURE.COM agree that the arbitration will be conducted solely on an individual basis and not on a class, representative, consolidated, or private attorney general basis. A Dispute may not be consolidated with a claim brought or discovered by any person or entity that is not a party to the arbitration proceeding. The arbitrator may not award relief to any person or entity other than a party to the arbitration proceeding and may only award such relief as is necessary to provide relief to a party to the arbitration proceeding. If a court deems any portion of this Section B invalid or unenforceable, then Sections A and C of the Agreement will be null and void.
- C. *Fees and Costs in Arbitration.* If your total damage claims are \$25,000 or less, not including your attorneys' fees: (1) the arbitrator may award you your reasonable attorneys' fees, expert fees, and costs if you prevail in the arbitration; (2) the arbitrator may not award PATIOFURNITURE.COM its attorneys' fees, expert fees, or costs unless the arbitrator determines that your claim was frivolous or brought in bad faith; and (3) PATIOFURNITURE.COM will bear all filing fees and administrative fees and either reimburse you for any such fees that AAA requires you to pay upon initiating arbitration or, if you send a written request to Legal Department, Furniture.com America LLC, P.O. Box 468431, Perimeter Center, 4707 Ashford Dunwoody Road, Atlanta, GA 30338 before you initiate arbitration, PATIOFURNITURE.COM will pay to AAA any such fees that AAA requires to be paid upon initiation of arbitration. If your total damage claims are more than \$25,000, not including your attorneys' fees, then the arbitrator may award the prevailing party all or a portion of its reasonable attorneys' fees, expert fees, and costs. In arbitrations conducted under AAA's Consumer Arbitration Rules, (a) PATIOFURNITURE.COM will bear the arbitrator's fees and expenses, and (b) where no disclosed claims or counterclaims exceed \$25,000, the Dispute shall be resolved by the submission of documents only/desk arbitration, except that any party may ask for a hearing or the arbitrator may decide that a hearing is necessary. Except as otherwise provided herein, all filing fees, administrative fees, and arbitrator fees and expenses will be paid in accordance with the applicable AAA rules.
- D. *Non-Arbitration Class Action and Jury Waiver.* You and PATIOFURNITURE.COM agree that if for any reason a Dispute proceeds in court rather than arbitration: (1) you and PATIOFURNITURE.COM waive any right to a jury trial; (2) the Dispute will proceed solely on an individual, non-class, non-representative basis; and (3) neither you nor PATIOFURNITURE.COM may

be a class representative or class member or otherwise participate in any class, representative, consolidated, or private attorney general proceeding.

- E. *Severability*. If any part of this Agreement is found invalid or unenforceable, then the other parts of the Agreement shall remain in full force and effect, except that if any part of Section B is found invalid or unenforceable, then Sections A and C of the Agreement will be null and void, and the other parts of the Agreement shall remain in full force and effect.
16. **Assignment.** We may assign our rights and delegate our duties under these Terms of Use at any time to any party without notice to you. You may not assign these Terms of Use without our prior written consent.
17. **Interpretation.** These Terms of Use, and, as applicable, our Online [Terms and Conditions of Sale](#), are the entire agreement between you and PATIOFURNITURE.COM with respect to your access to and use of the Site. PATIOFURNITURE.COM's failure to enforce any provision in these Terms of Use will not constitute a waiver of that provision or any other provision. Any waiver of any provision of these Terms of Use will be effective only if in writing and signed by PATIOFURNITURE.COM. If any provision of these Terms of Use is held invalid, void, or unenforceable, that provision will be considered severable from the remaining provisions and the remaining provisions will remain in full force and effect, except as set forth in Section 15(B) and (E) above. The headings in these Terms of Use are for convenience only and do not affect the interpretation of these Terms. These Terms will inure to the benefit of PATIOFURNITURE.COM's successors and assigns.
18. **Survival.** Any provisions of these Terms of Use that are intended to survive termination (including any provisions regarding indemnification or limitation of our liability and the Dispute Resolution/Arbitration Agreement will continue in effect beyond any termination of these Terms of Use or of your access to the Site.
19. **Electronic Communications.** These Terms and any other documentation, agreements, notices, or communications between you and PATIOFURNITURE.COM may be provided to you electronically to the extent permissible by law. Please print or otherwise save a copy of all documentation, agreements, notices, and other communications for your reference.
20. **Contact Us.** If you have any other questions or concerns regarding these Terms of Use, please contact us by mail at: PatioFurniture.com, P.O. Box 468431, Atlanta, GA 30338 or by email at customerservice@patiofurniture.com.