

KINDLE LIVING
Terms and Conditions of Sale

1. Scope. Unless a separate written agreement is entered into between Kindle Living, and FITA Partners, LLC (collectively "Kindle Living") and the purchaser listed on the face of Kindle Living's quotation ("Purchaser") either modifying these terms and conditions or setting forth which terms will control, the following terms and conditions are part of Kindle Living's quotation and shall become the exclusive and binding agreement ("Agreement") between Kindle Living and Purchaser with respect to the order by Purchaser of outdoor heating products manufactured or otherwise sold by Kindle Living ("Products") and the sale of such Products by Kindle Living to Purchaser. Neither Kindle Living's acknowledgement of a Purchaser purchase order, nor Kindle Living's failure to object to a Purchaser purchase order or any other document, communication, or act of Purchaser will be deemed a waiver of any of these terms and conditions. NO TERM OR CONDITION OUTLINED IN ANY OF THE PURCHASER'S SOLICITATIONS OR PURCHASER PURCHASE ORDERS SHALL BECOME PART OF ANY ORDER OR OTHERWISE BECOME BINDING ON KINDLE LIVING UNLESS EXPRESSLY AGREED TO IN WRITING BY KINDLE LIVING. ANY PURCHASER PURCHASE ORDER IS ACCEPTED SOLELY ON THE CONDITION THAT THE PURCHASER EXPRESSLY ACCEPTS AND ASSENTS TO THE TERMS AND CONDITIONS CONTAINED HEREIN.
2. Prices. The pricing for the Products is set forth in Kindle Living's e-commerce site and is inclusive of all packing and cartage costs, sales, use, excise, or similar taxes, and freight. All prices are provided in U.S. Dollars. All sales are considered taxable in required states unless a resale certificate is completed, signed, verified, and provided to Kindle Living prior to Kindle Living's first shipment to the Purchaser. Purchaser shall pay for applicable boxing charges, quantity extras, and minimum charges if partial shipments are made at Purchaser's request.
3. Payment Terms. By purchasing through Kindle Living's e-commerce site, the Purchaser agrees to waive Kindle Living's standard deposit terms, which require a fifty percent (50%) deposit at the time of order. All e-commerce orders must be paid in full at the time of purchase, before shipment. For custom orders or purchases arranged directly with a Kindle Living representative, alternative payment methods, including check, ACH, or bank wire, may be accepted. Purchaser further agrees that Kindle Living shall have the right to set off any amounts payable by Kindle Living to Purchaser, whether under this Agreement or otherwise, against any amounts owed by Purchaser to Kindle Living, regardless of any contrary notation on checks or other forms of payment.
4. Purchase Orders. Purchaser shall issue to Kindle Living firm purchase orders ("Purchase Orders") for each order of Products. All Purchase Orders are subject to confirmation of the delivery schedule by Kindle Living before acceptance by Kindle Living. Notwithstanding anything else to the contrary, Kindle Living is free to accept or reject Purchase Orders from Purchaser, at its sole discretion, and Kindle Living's acceptance of a Purchase Order shall occur only upon the earlier of Kindle Living's commencement of performance under such Purchase Order or the transmission of an order confirmation by Kindle Living for such Purchase Order. NO ACCEPTED PURCHASE ORDER FOR PRODUCTS MAY BE CANCELLED OR CHANGED WITHOUT KINDLE LIVING'S PRIOR WRITTEN APPROVAL. Kindle Living reserves the right to change specifications and/or designs without incurring any additional obligations to the Purchaser. In the event of cancellation or withdrawal of a Purchase Order for any reason, and without limitation to Kindle Living's right to assert any other remedy to which Kindle Living may be entitled, 100% of the amount of the Purchase Order or accepted invoice shall be due and immediately paid by Purchaser on demand. In any event, any Terms and Conditions of Sale included in an invoice issued by Kindle Living shall supersede those of a purchaser issued Purchase Order.
5. Shipment Terms. Kindle Living now offers complimentary standard shipping within the continental United States, which is included in the purchase price of each order unless otherwise stated. However, additional shipping charges may apply for destinations that are remote, difficult to access, or require special delivery arrangements (e.g., islands, mountainous regions, or rural areas requiring non-standard vehicles). If such surcharges apply, the Purchaser will be notified prior to shipment and invoiced for the difference. Kindle Living reserves the right to withhold shipment until these additional fees are paid in full. Kindle Living may alter or modify any estimated delivery date if, in Kindle Living's sole discretion, circumstances arise that make timely delivery impracticable or unreasonable. Purchaser agrees to hold Kindle Living harmless from any claims, damages, or delays resulting from such alterations. All Products are shipped FOB San Fernando, California, Kindle Living's facility, unless otherwise agreed in writing. Title and risk of loss pass to Purchaser upon delivery of the Products to the carrier. Kindle Living retains the right of stoppage in transit in the event of default. Choice of carrier, shipping method, and delivery route shall be at Kindle Living's discretion unless specifically requested and agreed upon in writing by the Purchaser. If the Purchaser requests delayed or rescheduled delivery after the Products are ready to ship, Kindle Living may charge reasonable storage fees until such time that delivery instructions are provided or rescheduling is complete. Additionally, Kindle Living may refuse or delay shipments if Purchaser has not made timely payment for this or any other agreement with Kindle Living.
6. Delayed Delivery. Kindle Living's ship dates are estimates, and the actual ship date will depend on a variety of factors, including manufacturing schedule, completion of required information, acceptance of terms and execution of documents, receipt of full payment, etc. Commencement of shipping is subject to change without notice to Purchaser. Kindle Living shall not be liable for delays or damages suffered by Purchaser in delivery or for failure to perform due to causes beyond the reasonable control of Kindle Living, including, without limitation, acts of God, acts or omissions of Purchaser or civil or military authorities, fire, strikes, epidemics, quarantine restriction, flood, earthquakes, riot, war, terrorism, computer virus, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of delay, the contractual date of delivery shall be extended for a period equal to the time lost as a consequence of each delay without penalty to Kindle Living.
7. Transfer of Risk and Title. Risk of loss of the Product passes to Purchaser on Kindle Living's delivery of the Product to the carrier, and you are responsible for any loss or damage to the Product from that point. Claims against a carrier for damage during shipping are the Purchaser's responsibility.
8. Inspection. Purchaser shall inspect all shipments immediately upon arrival, and if needed, claims should be filed with the common carrier for any losses and or damages of any kind. Products are deemed accepted by Purchaser unless Purchaser notifies Kindle Living in writing within five (5) calendar days of delivery of Product shortages or defects, other than those caused by shipment and/or the common carrier. Purchaser shall be responsible for conducting any acceptance tests on the Products during the above five (5) calendar day period. Products will be also be deemed accepted upon Purchaser's first productive use of such Products prior to the lapse of the above five (5) calendar day period.
9. Warranty. Kindle Living warrants that Products manufactured by Kindle Living will be free from defects in material and workmanship for the period of twelve (12) months following the date of delivery by Kindle Living ("LIMITED WARRANTY"). This Limited Warranty does not apply to damages caused by the following: accidents, misuse, alterations, careless positioning, sudden and severe weather events, other acts of nature, and/or the failure to maintain a suitable installation environment (including electrical power, temperature control, space and capacity). Kindle Living is not responsible for and will not cover damage to a heater, shade or Kindle shell which occurs as a result of contact with the ground or any other foreign object. Including, but not limited to, Kindles placed beside other non-Kindle heaters. Seaside locations within ½ mile from oceanfront shall be limited to three (3) month warranties given adverse operating conditions. Purchaser acknowledges that Kindle Living is a distributor and not the manufacturer of certain Products ("Third Party Products"). All Third Party Products are covered by, and subject to, the terms, conditions, and limitations of the manufacturer's standard warranty, which warranty is expressly in lieu of any other warranty, express or implied of or by Kindle Living or the manufacturer. PURCHASER ACKNOWLEDGES THAT EXCEPT AS SPECIFICALLY FOR THE LIMITED WARRANTY AND AS SET FORTH OR REFERENCED IN THIS PARAGRAPH WITH RESPECT TO THE MANUFACTURER'S WARRANTIES, THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND BY KINDLE LIVING OR ANY OTHER PERSON, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KINDLE LIVING DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, OR OTHERWISE, OR ANY WARRANTIES ARISING OUT OF COURSE OF CONDUCT OR OTHER TRADE CUSTOM OR USAGE, AND KINDLE LIVING ASSUMES NO RESPONSIBILITY OR

LIABILITY WHATSOEVER FOR THIRD PARTY PRODUCTS OR PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO KINDLE LIVING BY OR ON BEHALF OF PURCHASER.

10. **Warranty Claims.** All claims made pursuant to the Limited Warranty may only be made by Purchaser and must be in writing. Any warranty claims with respect to Third Party Products shall be made directly with the applicable manufacturer only. No claim made by any of Purchaser's customers or end users shall be effective. Purchaser shall comply with Kindle Living's then current Return Materials Authorization ("RMA") procedure for all Limited Warranty claims. Purchaser's exclusive remedy, if any, under the Limited Warranty or manufacturer's warranty, as the case may be, is limited, at Kindle Living's election, to any one of (a) repair by Kindle Living or other applicable manufacturer, as the case may be, at such party's facility, of any Products found to be defective; (b) replacement of any such Product; or (c) a refund of Purchaser's purchase price, if after repeated efforts Kindle Living or the manufacturer, as the case may be, is unable to repair or replace a defective Product. The Limited Warranty does not include labor, transportation, or other expenses to repair or reinstall warranted Products. All freight and other carriage costs under an RMA, whether covered by the Limited Warranty or not, are the sole responsibility of the Purchaser. Kindle Living reserves the right to investigate any Limited Warranty claims to quickly resolve the problem or to determine whether such claims are proper. This Limited Warranty shall not apply to any Product, or parts thereof, that (w) has had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible; (x) has been damaged in shipping; (y) has been damaged by or subject to improper installation or operation, misuse, accident, neglect and/or has been used in any way other than in strict compliance with Kindle Living's specifications; or (z) is a Third Party Product. If any Limited Warranty claim by Purchaser falls within any of the foregoing exceptions, Purchaser shall pay Kindle Living its then-current rates and charges for such services.

11. **Return Policy.** Purchaser has one (1) business day or 24 hours, whichever is later, to cancel or amend the order. Kindle Living is available during this time to answer questions, provide guidance, and offer suggestions. Further, after one business day or 24 hours, the order becomes non-refundable, non-cancellable, as it enters Kindle Living's production schedule. All sales become final at that point. No exceptions. Please note: If a refund is issued during the cancellation window, it will be processed less non-refundable credit card processing fees.

12. **Prohibition of Product Use in High Risk Applications or in Violation of Law.** Unless specifically otherwise agreed in writing by Kindle Living, Purchaser acknowledges that products sold by Kindle Living are not intended for and will not be used in: (i) high risk applications, including but not limited to, life support systems, human implantation, nuclear facilities or systems, or any other application where product failure could lead to loss of life or catastrophic property damage; or (ii) violation of any local laws, statutes or regulations. Under penalty of law, product labeling and Kindle Living logos may not be removed or defaced, and failure to comply will result in voiding the warranty.

13. **Wind Advisory.** Kindle Living recommends that all Kindle products be secured with floor clamps (provided). During breezy or gusty conditions, please use reasonable and cautious judgment when determining if Kindle Shade (top) should be removed and stored. The stability of Kindle products in heavy wind and severe weather conditions is directly related to the size, weight, and security of the anchors and/or placement of the product. Always be attentive and aware of the weather environment when using Kindle Living products. Please refer to the user manual for additional information.

14. **Indemnity.** Purchaser shall indemnify, defend, and hold Kindle Living harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorneys' fees and costs incurred, whether or not a lawsuit or other action is filed, that in any way arise out of or relate to any personal injuries, property damages or other losses resulting or occurring from: (i) Purchaser's breach of the provisions of paragraph 11; and/or (ii) machinery, devices, components or other materials made using the Products or otherwise incorporating or containing the Products. The foregoing indemnities shall be payment obligations and not merely reimbursement obligations, it being understood that Purchaser and Kindle Living have a "contrary intention" with respect to the provisions of paragraph 2 of Section 2778 of the California Civil Code.

15. **Arbitration.** These Terms provide that all disputes will be resolved by BINDING ARBITRATION. PURCHASER AGREES TO GIVE UP THEIR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot be brought as a class action.

16. **Limitation of Liability.** KINDLE LIVING SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED BY PURCHASER AND/OR ANY OTHER PARTY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING FROM THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE USE OR INABILITY TO USE THE PRODUCTS, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER FORESEEABLE OR NOT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL KINDLE LIVING'S LIABILITY FOR ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT EXCEED AMOUNTS RECEIVED AND RETAINED BY KINDLE LIVING IN CONNECTION WITH THE SPECIFIC PRODUCT(S) GIVING RISE TO SUCH CLAIM OR DISPUTE. NO ACTION, REGARDLESS OF FORM, ARISING UNDER THIS AGREEMENT MAY BE BROUGHT BY THE PURCHASER MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION.

17. **Export Compliance.** Purchaser acknowledges that Products intended for export, re-export, and/or international sales are made with full disclosure to Kindle Living as to intended destination outside the United States, and that Purchaser is fully compliant with United States Export Laws. Any or all Products may be subject to export or resale restrictions or regulations, and Purchaser acknowledges that it will comply with such regulations or restrictions. Additionally, Purchaser acknowledges that Products shipped internationally may be impounded or otherwise confiscated by customs or other authorities. Purchaser is responsible for compliance with all applicable export control laws and regulations. Purchaser agrees not to export, re-export, or transfer directly or indirectly any Product to: (i) an embargoed/terrorist supporting country as determined by the US government; (ii) a person or entity barred by the US Government on export activity lists, or (iii) any destination for an end use that is prohibited by applicable law. Purchaser hereby agrees to indemnify and hold Kindle Living harmless against all claims, damages, or liability resulting from breach of the foregoing.

18. **General Terms.** The relationship between Purchaser and Kindle Living is only that of independent contractors, notwithstanding any activities set forth in this Agreement. No party is the agent or legal representative of any other party, and no party has the right or authority to bind any other party in any way. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements, whether oral or written. This Agreement shall be interpreted and enforced under the laws of the State of California, without application of its conflicts or choice of law rules. The parties irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts located in San Diego, California, for any action or proceeding regarding this Agreement, and the parties waive any right to object to the jurisdiction or venue of the courts in San Diego, California. In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses incurred, in addition to any other relief to which it is entitled. This Agreement shall be modified or amended only by a writing signed by Kindle Living and Purchaser. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, void, or unenforceable, each and every other provision shall nevertheless continue in full force and effect. The failure of a party to enforce any of its rights hereunder or at law shall not be deemed a waiver or a continuing waiver of any of its rights or remedies against the other parties, unless such waiver is in writing and signed by the party to be charged. All covenants, representations, warranties, and agreements of the parties contained herein shall be binding upon and inure to the benefit of their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Each term and condition under this Agreement will remain effective for so long as may be necessary to give effect to its purpose.