

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 SET FORTH IN ANY OF 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 PURCHASER EXPRESSLY ACCEPTS AND ASSENTS TO THE TERMS AND CONDITIONS CONTAINED HEREIN.
2. Quotation. KINDLE LIVING'S QUOTATION IS A CONDITIONAL OFFER AND ACCEPTANCE BY PURCHASER IS EXPRESSLY LIMITED TO THE TERMS OF THE QUOTATION, INCLUDING, BUT NOT LIMITED, THESE TERMS AND CONDITIONS. All quotations are intended for immediate acceptance and acceptance is limited to the quantities shown. Unless previously withdrawn by Kindle Living, Kindle Living's quotation expires 30 days from the date it was issued.
3. Prices. The pricing for the Products is set forth in Kindle Living's quotation and is exclusive of all packing and cartage costs, sales, use, excise or similar taxes, freight, duties, customs clearance, and applicable charges, which are the sole responsibility of Purchaser and which shall be stated separately on Kindle Living's invoice to Purchaser. All prices are provided in U.S. Dollars. All sales are considered taxable unless a resale certificate is completed, signed, verified and provided to Kindle Living prior to Kindle Living's first shipment to Purchaser. Purchaser shall pay for applicable boxing charges, quantity extras and minimum charges if partial shipments are made at Purchaser's request. Purchaser shall also pay for storage charges if Products are held by Kindle Living at Purchaser's request pending rescheduled delivery.
4. Payment Terms. Purchaser shall pay to Kindle Living a deposit equal to fifty percent (50%) of the total order price at the time the order is made. The balance of the amount owed for the order, including all other related costs and expenses, shall be paid by Purchaser prior to shipment by Kindle Living. Any invoice issued shall be due within seven (7) calendar days. If payment is not received by the applicable due date, a storage charge of five percent (5%) per month of the unpaid balance shall be due and payable by Purchaser. Should Purchaser's financial responsibility and/or credit-worthiness become unsatisfactory to Kindle Living, cash payments or satisfactory security may be required by Kindle Living for future deliveries. Payment may be made by check or bank wire. Purchaser agrees that Kindle Living shall have the right to set off against any amounts which may become payable by Kindle Living to Purchaser under this Agreement or otherwise any amounts which Purchaser may owe Kindle Living, whether arising under this Agreement or otherwise, notwithstanding any statement appearing on or referring to such check.
5. 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 delivery schedule by Kindle Living prior to 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 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.
6. Shipment Terms. Kindle Living may alter or modify any delivery dates set forth in a Purchase Order upon the occurrence of any event which, in Kindle Living's sole discretion, makes such delivery impracticable or unreasonable, and Purchaser agrees to hold Kindle Living harmless from any claims resulting from such alteration or modification of any delivery date. All Products shall be shipped EXW (Ex Works INCOTERMS 2000) Kindle Living's facility, and all transportation charges shall be paid by Purchaser. Unless otherwise agreed upon in writing by Kindle Living, Purchaser is responsible for all transportation, insurance, brokerage fees, duties and other applicable expenses associated with the shipment. These expenses shall be added to Kindle Living's invoice if prepaid by Kindle Living. Choice of carrier, shipping method and route shall be at the election of Kindle Living unless specifically designated by Purchaser. Kindle Living shall be entitled to refuse or to delay shipments for failure by Purchaser to promptly pay any payments due Kindle Living on this or any other agreement between Kindle Living and Purchaser. Kindle Living shall have the right to deliver all Products covered hereby in a single lot or multiple lots, within the delivery time provided in such order. Purchaser shall pay for storage charges if products are held by Kindle Living at Purchaser's request pending instruction or rescheduled delivery. Subject to Kindle Living's right of stoppage in transit, delivery of Products to the common carrier at the shipping point shall constitute delivery to Purchaser. Unless otherwise agreed upon in writing by Kindle Living, title and risk of loss shall pass to Purchaser on delivery as defined in the previous sentence and Purchaser shall thereupon bear the entire risk of loss and shall be liable for all loss or damage to the Products.
7. Delayed Delivery. 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 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.
8. Receiving Inspection by Purchaser. Purchaser shall inspect and count all shipments immediately upon arrival and shall file claims with or against the common carrier for any losses, shortages 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, acts of God, misuse, alterations, and/or the failure to maintain a suitable installation environment (including electrical power, temperature control, space and capacity). 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,

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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 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. 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.

12. 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.

13. 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 FOR THE SPECIFIC PRODUCT(S) GIVING RISE TO SUCH CLAIM OR DISPUTE. NO ACTION, REGARDLESS OF FORM, ARISING UNDER THIS AGREEMENT MAY BE BROUGHT BY PURCHASER MORE THAN ONE (1) YEAR AFTER THE OCCURRENCE OF THE EVENTS WHICH GAVE RISE TO THE CAUSE OF ACTION.

14. 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 restriction or regulation, and Purchaser acknowledges that it will comply with such regulations or restrictions and Purchaser hereby agrees to indemnify and hold Kindle Living harmless from any loss, cost or liability that arises directly or indirectly out of any claim that Purchaser failed to observe United States Export Laws. Any or all products may have been imported. Country of origin information is as provided to Kindle Living by its suppliers and is, where applicable, located on the products themselves or the supplier's packaging.

15. 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.

