

Sell to TJX Canada Application for Shopify Merchants Terms of Use

The following terms of use (the “Terms of Use”) govern your access to and use of our “Sell to TJX Canada App for Shopify Merchants” application (the “App”) provided by us to you through the Shopify App site. The App is a platform for Canadian Shopify Merchants to communicate with TJX Canada and its divisions, Winners, Marshalls, and HomeSense, subsidiaries of Winners Merchants International L.P. (collectively “TJX Canada”). The term “you” refers to the person or entity browsing, installing, downloading, accessing or otherwise using the App.

By using the App, you (A) represent and warrant that: (1) you have reached the age of majority in your jurisdiction of residence, (2) you have the capacity to enter into binding obligations, and (3) all information supplied by you to us through the App is true, accurate, current and complete; and (B) you agree to be bound by and comply with these Terms of Use, as updated from time to time. If you do not agree with any of the Terms of Use, please do not use the App. If you are using the App on behalf of another person or a corporate entity, you represent and warrant that you have the authority to bind such person or entity to these terms.

Changes to these Terms of Use and the App

Except where prohibited by applicable law, we reserve the right to change these Terms of Use at any time without notice. Your continued access to or use of the App after any changes to these Terms of Use indicates your acceptance of such changes. It is your responsibility to review these Terms of Use regularly. We reserve the right to change or remove any content, including any data, graphics, photographs, images, audio, video, software, systems, processes, trademarks, service marks, trade names and other information including, without limitation, the “look and feel” of the App (collectively, the “Content”) at any time and without notice.

Ownership and Grant of Rights

The App is owned and operated by TJX Canada. Any and all Content contained in the App is proprietary to TJX Canada. The Content is protected by Canadian copyright, trademark and other intellectual property laws.

Subject to these Terms of Use, TJX Canada grants you a personal, revocable, non-exclusive and non-transferable license during the Term (as defined in “Term and Termination”) to use the App in accordance with these Terms of Use.

User Account

You will be required to access the App using your Shopify credentials. You agree to keep your credentials secure and agree not to share them with anyone else. You are solely responsible for the activity that occurs on your user account using your credentials. You must notify us immediately of any actual or suspected breach of security or unauthorized use of your user account. TJX Canada reserves the right to disable any user account issued to you at any time and without notice in TJX Canada’s sole discretion.

Data and Privacy

Information that may identify you (“Personal Information”) collected through App will be collected and used in accordance with our [TJX Logistics Privacy Notice](#).

In connection with any data that you provide or otherwise make available to TJX Canada through the App (the “User Data”), you grant to us an irrevocable, worldwide, non-exclusive, royalty-free, fully paid-up, transferable and sub-licensable license to access, collect, store and use the data, information, records, or files that you load, transmit to, provide access to, or enter into the App. You also waive (or, in connection with your provision of User Data to TJX, have obtained a waiver of) any moral rights in favour of TJX Canada in the User Data. Other than Personal Information, all other User Data shall remain the property of TJX Canada. TJX Canada shall be under no obligation to keep this User Data in confidence. Due to the foregoing, we ask that you not send us any User Data that you do not wish to assign to us. TJX Canada shall not be liable for any use or disclosure of any User Data.

You warrant that you have the right to grant TJX Canada the rights in the User Data described above. You agree that no User Data will violate any right of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary right(s). You also agree that no User Data will be or contain libelous or otherwise unlawful, abusive, immoral or obscene material or that will constitute or encourage conduct that would be considered criminal or encourage conduct that is criminal. You are and shall remain solely responsible for the content of any User Data. TJX Canada reserves the right to take any action they reasonably deem necessary to cure or prevent a violation of the Terms of Use, including without limitation, removal from this App of any User Data.

Additional Terms

Additional Terms and Conditions shall apply once you have submitted an offer to TJX Canada through the App and TJX Canada has accepted your offer. Any purchase order between you and TJX Canada shall be subject to additional terms, including but not limited to, the applicable Purchase Order Terms and Conditions.

Copyright, Trademark and Other Intellectual Property Rights

Except as otherwise expressly noted, all images, illustrations, designs (including product designs), graphics, icons, photographs, text, audio clips, video clips, and other materials that appear as part of the App as well as the selection, arrangement and organization of the foregoing and the App as a whole (collectively, “Content”) are subject to copyright, trademark, service mark, trade dress, and/or other intellectual property rights or licenses, and rights of publicity and privacy, all worldwide rights, titles and interests in and to which are owned by or licensed to the TJX Canada, or our suppliers. Certain trademarks, service marks and trade names on the App are the registered or unregistered trademarks, service marks and trade names of TJX Canada and may not be used without our express permission. Other trademarks, service marks and trade names and products contained herein are the registered or unregistered property of their respective owners. All software used on this App is the property of TJX Canada or their suppliers and is protected by U.S. and international copyright and other intellectual property

laws.

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Any references on this App to the trademarks, service marks, trade names, products, company names or services of third parties are provided for your convenience and do not in any way constitute or imply an endorsement or recommendation of that third party or its products or services by TJX Canada.

Third Party Links

The App may contain links to third-party websites or content posted on third-party websites (the “**Links**”). TJX Canada provides the Links only as a convenience to help you identify and locate other Internet resources that may be of use.

You acknowledge that in providing the Links TJX Canada:

1. does not endorse any third-party website or content accessible via the Links;
2. does not act as an editor, publisher or disseminator of any content accessible via the Links and does not control or monitor any third-party website or content;
3. does not make any representation or warranty of any kind regarding the Links;
4. is not responsible, directly or indirectly, in any way for the accuracy, relevancy, completeness, timeliness or legality of any content accessible via the Links; and
5. is not responsible, directly or indirectly, in any way for any loss or damage of any kind incurred as a result of, or in connection with, your use of, or reliance on, any of the Links.

You agree that you are solely responsible for:

1. taking all protective measures to guard against viruses and other destructive elements;
2. abiding by the terms and conditions of use and reviewing the privacy policies posted at the third-party websites; and
3. evaluating the content accessible via the Links and bearing all risks associated with your use of, and reliance on, any such content.

Acceptable Use of the App

You are responsible for your use of the App, and for any use of the App made using your

account. Our goal is to create a positive and safe community experience. To promote this goal, we prohibit certain kinds of conduct that may be harmful to other users or to TJX Canada. When you use the App, you may not and agree that you will not:

- use automated methods, including through bots, spiders, crawlers, etc., to access the App and Services for any purpose;
- violate any law or regulation;
- violate or infringe other people's intellectual property, privacy, publicity, or other legal rights;
- use our App to transmit, distribute, post or submit any information concerning any other person or entity, including without limitation, photographs or contact information of others without their permission;
- disclose confidential business information to third parties, including, but not limited to, pricing information, payment terms, or other information provided by TJX Canada to you in the course of your communications with TJX Canada;
- transmit anything that is illegal, abusive, harassing, harmful to reputation, pornographic, indecent, profane, obscene, hateful, racist, or otherwise objectionable;
- send unsolicited or unauthorized advertising or commercial communications, such as spam;
- transmit any malicious or unsolicited software;
- stalk, harass, or harm another individual;
- impersonate or misrepresent your affiliation with someone else;
- use automated methods to use the App in a manner that sends more requests to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional Web browser;
- interfere with or damage our App, including, without limitation, through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology;
- register for more than one account or register for an account on behalf of an individual other than yourself;
- use, display, mirror or frame the App or any individual element within the App, TJX Canada's names, any trademarks, logos or other proprietary information, or the layout and design of any page or form contained on a page, without TJX Canada's express written consent;
- access, tamper with, or use non-public areas of the App, TJX Canada's computer systems, or the technical delivery systems of TJX Canada's providers;
- attempt to probe, scan, or test the vulnerability of any TJX Canada system or network or breach any security or authentication measures;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by the TJX Canada or any of the TJX' Canada s providers or any other third party (including another user) to protect the App;
- attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the App; or
- advocate, encourage, or assist any third party in doing any of the foregoing.

TJX Canada will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. TJX Canada may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms of Use. You acknowledge that TJX Canada has no obligation to monitor your access to or use of the App or to review or edit any Submission or other posted content, but have the right to do so for the purpose of operating the App, to ensure your compliance with these Terms of Use, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. TJX Canada reserves the right, at any time and without prior notice, to remove or disable access to any content that TJX Canada, at its sole discretion, considers to be objectionable for any reason, in violation of these Terms of Use or otherwise harmful to the App. TJX Canada reserves the right, at any time, to require that you remove any confidential business information you post on Shopify's review and comment platform concerning this App or TJX Canada.

Disclaimer and Limitation of Liability

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TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TJX CANADA BE LIABLE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, FOR ANY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS, LOSS OF USE, LOSS OF DATA, PERSONAL INJURY, FINES, FEES, PENALTIES OR OTHER LIABILITIES), WHETHER OR NOT WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, RESULTING FROM OR RELATED TO THESE TERMS OF USE.

TO THE EXTENT THAT THE FOREGOING LIMITATION IS NOT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL OUR TOTAL AGGREGATE LIABILITY IN CONNECTION WITH OR UNDER THESE TERMS OF USE, OR YOUR USE OF, OR INABILITY TO MAKE USE OF, THE APP EXCEED CAD \$50. THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THESE TERMS OF USE WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT.

Indemnification

You will defend, indemnify and hold harmless TJX Canada and our officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including reasonable legal and accounting fees, arising out of or in connection with:

- (a) your breach of any provision of these Terms of Use or any documents referenced herein;
- (b) your violation of any law or the rights of a third party (including intellectual property rights); or
- (c) your use of the App.

Term and Termination

These Terms of Use will commence on the day you first use the Platform and will continue until terminated by either party (the “**Term**”). We reserve the right to terminate these Terms of Use or a user’s access at any time, with or without notice in our sole discretion, including without limitation in the event of your breach of these Terms of Use. We reserve the right not to provide the App to any user.

The following sections of these Terms of Use, together with any other provision of these Terms of Use which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of these Terms of Use, will survive expiration or termination of these Terms of Use for any reason: Privacy and Data; Copyright, Trademark, and Other Intellectual Property; Disclaimer and Limitation of Liability; Indemnification; Terms and Termination; and General Provisions.

General Provisions

Choice of Law. Except as restricted by applicable law, these Terms of Use will be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and such laws apply to your access to or use of the App, notwithstanding your domicile, residency or physical location. You will only use the App in jurisdictions where the App may lawfully be used.

Arbitration: Except where prohibited by law, any controversy, claim or dispute arising out of, relating to, or in respect of these Terms, including their negotiation, validity, existence, breach, termination, construction or application, or the rights, duties or obligations of any party, or the rights, duties or obligations of any party derived from or associated with these Terms (a “Dispute”), shall be referred to and determined by a single arbitrator in a final and binding arbitration administered under the rules of ADR Institute of Canada, Inc.’s Arbitration Rules. If the parties have not agreed upon an arbitrator within 14 days, unless otherwise agreed by the parties in writing, the parties shall ask the ADR Institute of Canada, Inc. to appoint a single arbitrator.

The seat of the arbitration shall be Ontario, Canada. The arbitration shall be heard in the City of Toronto, unless the parties agree otherwise. The costs and expenses of the arbitrator shall be shared equally between the parties. A party to the arbitration has no right of appeal from any award of the Arbitrator, whether characterized as final, interim, interlocutory or partial.

All Disputes referred to arbitration (including the scope of the agreement to arbitrate, the law relating to the enforcement of the agreement to arbitrate, any relevant limitation periods, the law governing the procedure of the arbitration, the law relating to available remedies, set-off claims and conflict of laws rules) shall be governed by the law of the seat. Each party hereby irrevocably consents to venue in the capital of the seat, and to the jurisdiction of competent courts in the capital of the seat for all litigation that may be brought, however it is agreed and acknowledged that the intention of the parties is to arbitrate the Dispute without recourse to the courts.

A party to these Terms may take such steps as are permitted or required to enforce an award made by an Arbitrator. Except as required by law, and only to the extent that such disclosure is reasonably necessary, or for the purposes of obtaining professional advice, the existence of the arbitration and any element of the arbitration, including any award, shall be confidential and shall not be disclosed to any non-party to the arbitration. No document or other evidence or information prepared for or produced by or on behalf of any party to the arbitration shall be disclosed to any non-party to the arbitration.

Entire Agreement. These Terms of Use constitute the entire agreement between you and us pertaining to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us with respect to the App. A printed version of these Terms of Use and of any notice 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.

Waiver. Our failure to insist upon or enforce strict performance of any provision of these Terms of Use will not be construed as a waiver of any provision or right. A waiver of any provision of these Terms of Use must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.

Severable. If any of the provisions contained in these Terms of Use are determined to be void, invalid or otherwise unenforceable by a court of competent jurisdiction, such provision will be severed from these Terms of Use and all other provisions of these Terms of Use will remain in full force and effect.

English Language. It is the express wish of the parties that these Terms of Use and all related documents be drawn up in English. *C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.*