

Terms of Use

Please read these Terms of Service (the Agreement) carefully. This Agreement is between you and Builder Trade In Program™ (“we” or “us”). Unless different terms specifically apply to a particular website or service, this Agreement governs your access and use of buildertradein.com.

By registering an account, clicking, or tapping any button or box marked “accept,” “agree” or “OK” (or a similar term), or by using the Services, you agree to be bound by the terms of this Agreement and any changes to it. References to “you” and “your” in this Agreement mean both the individual using the Services and to an Organization (defined below).

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT, AS DESCRIBED IN SECTION 16 BELOW, REQUIRES USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN BY JURY TRIALS OR ANY OTHER COURT PROCEEDINGS, OR CLASS ACTIONS OR CLASS ARBITRATIONS.

You affirm that you are of legal age to enter into this Agreement. If you are accessing or using the Services on behalf of, or for the benefit of, an entity (an Organization), then you are agreeing to this Agreement on behalf of yourself and the Organization, and you represent that you have the authority to do so.

1. CHANGES.

We may change this Agreement by notifying you by any reasonable means, including posting a revised Agreement through the Services. The “Last Updated” legend shows when this Agreement was last changed.

Subject to applicable data privacy laws, we may, at any time and without liability: (a) modify or discontinue all or part of the Services; or (b) charge, modify, or waive any fees required to use the Services.

2. LICENSE TO USE THE SERVICES.

We grant you a limited, revocable, non-exclusive license to use the Services and we provide the Services for your personal use only unless we agree otherwise. The Services, and all its elements, are owned by us or licensed to us by third parties. We and such third-party licensors retain all right, title, and interest in the Services, including all patent, copyright, trademark, and trade secret rights therein.

The Services may not work with all hardware or devices. You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed for you to use the Services. The Services may include software applications that may make available additional products and services (these are collectively referred to as the “Apps”). You may be required to download or use specific software and Apps for certain components of the Services to function properly.

3. REGISTRATION; USERNAMES AND PASSWORDS.

You may have to register an account with us to use the Services. We may reject, or require that you change, any username, password or other information that you provide to us in registering. Your username and password are for your personal use only and must be kept confidential. You are responsible for the security of your account and all actions associated with it. You must promptly notify us of any confidentiality breach or unauthorized use of your username or password, or your Services account.

4. INFORMATION COLLECTED THROUGH THE SERVICES.

Client Data. “Client Data” means any information related to former, current, or prospective clients of BTIP or its agents, or information related to you that is uploaded, or synchronized with Apps (defined in Section 2), in the Services.

Information You Provide Through the Services. You promise that: (a) you have complied with and will continue to comply with all laws applicable to any information you provide or access through the Services, including but not limited to Client Data (as defined below); (b) such information is and will remain accurate and complete, and you will maintain and update the information as needed; and (c) you have all necessary rights and permissions to authorize the processing of such information under this Agreement.

Privacy Policy. You agree that the Services, including Apps licensed by us, may collect, transmit, and process data as described in the BTIP Privacy Policy located at <https://www.buildertradein.com/privacypolicy> (the Privacy Policy), as such policy may be updated over time. For clarity, you agree that BTIP may share any information it collects through the Services, including personally identifiable information, with BTIP’S affiliated entities and other third parties.

5. YOUR CONDUCT. YOU MUST NOT:

- Post, transmit or make available any materials that are or may be: (a) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (b) defamatory, libelous, fraudulent or otherwise tortious; (c) obscene, indecent, pornographic or otherwise objectionable; or (d) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.
- Post, transmit or otherwise make available any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment (each, a Virus).

- Link, integrate, or provide access to the Services or related infrastructure without BTIP's prior explicit permission.
- Use the Services in any way or for any purpose that is unlawful, fraudulent, or otherwise tortious.
- Impersonate someone else in relation to your activities on the Services.
- Transmit any spam, chain letters or other unsolicited communications.
- Harvest or collect information about users of the Services.
- Interfere with the operation or content of the Services, or the servers or networks used to make the Services available (for example, by hacking or defacing any portion of the Services), or violate any requirement, procedure or policy of such servers or networks.
- Inhibit any other person from using the Services.
- Reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of the Services.
- Reverse engineer, decompile or disassemble any portion of the Services.
- Remove or alter any copyright, trademark or other proprietary rights notice from the Services.
- Frame or mirror any portion of the Services, or incorporate any portion of the Services into any product or service.
- Systematically download or store Services content.
- Tamper with or circumvent any security technology associated with the Services.
- Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather Services content (including Submissions), or reproduce or circumvent the navigational structure or presentation of the Services, without our express prior written consent.

We may monitor your use of the Services to determine compliance with this Agreement. We may remove or refuse any data or material included in the Services, in whole or in part, for any reason. We may disclose information regarding your access to and use of the Services, and the circumstances surrounding such access and use, to anyone for any reason or purpose.

6. THIRD PARTY MATERIALS; LINKS.

Some of the Services' functionality may include third-party materials, including Apps (Third Party Materials), or allow for the routing or transmission of such Third Party Materials, including via links. By using such functionality, you are directing us to access, route and transmit to you the applicable Third Party Materials.

We do not endorse, and make no representations or warranties related to, any aspect of the Third Party Materials. Your use of any Third Party Materials is at your own risk and subject to any additional terms, conditions, and policies applicable to such Third Party Materials (such as terms of service or privacy policies of the providers of such Third Party Materials) (the Third Party Terms). You are solely responsible for your compliance with such Third Party Terms. We have no obligation to monitor any Third Party Materials, and we may block or disable access to any Third Party Materials (in whole or in part) through the Services at any time.

9. SUBMISSIONS.

Users may make available information, data and materials through or in connection with the Services (each a “Submission”), including on profile pages or through the Services’ interactive features and submitting reviews of Apps. We have no control over, and we are not responsible for, any Submission, or use or misuse (including any distribution) of Submissions. We have the right to remove, screen, edit or reinstate any Submissions, including reviews, in our sole discretion and without notice to you. If you choose to make any of your personally identifiable or other information publicly available through the Services, you do so at your own risk.

Additionally, if you provide to us any ideas, proposals, suggestions or other materials (Feedback), such Feedback will be deemed a Submission, and you hereby acknowledge and agree that such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place us under any fiduciary or other obligation.

10. LICENSE.

As between you and us, you retain ownership of your Submissions, exclusive of any visual interfaces, designs, aggregated data that is not identified with an individual, or other elements of the Services. For each Submission, you grant to us an unlimited, worldwide, royalty-free, fully paid-up, non-exclusive, perpetual, irrevocable, transferable and fully sublicensable (through multiple tiers) license, without additional consideration to you or any third party, to reproduce, distribute, perform

and display (publicly or otherwise), create derivative works of, adapt, modify and otherwise use, analyze and exploit such Submission (provided that our use and other processing of Personal Information as defined in the Privacy Policy does not violate the Privacy Policy), in any format or media now known or later developed, and for any purpose (including promotional purposes, such as testimonials).

You promise that you have all rights necessary to grant the licenses granted in this Agreement, and that your Submissions are complete and accurate, and are not fraudulent, tortious or in violation of any applicable law or any right of any third party. You further irrevocably waive any “moral rights” or other rights with respect to attribution of authorship or integrity of materials related to each Submission that you may have under any applicable law under any legal theory.

11. BUILDER TRADE IN PROGRAM PROPRIETARY RIGHTS.

We and our suppliers own the Services, which are protected by proprietary rights and laws. Our trade names, trademarks and service marks include Builder Trade In, BTIP and any associated logos. All trade names, trademarks, service marks, logos, copyrightable works and other content, information and materials on or made available through the Services that are not owned by us are the property of their respective owners. You may not use our trade names, trademarks, service marks or logos in connection with any product or service that is not ours, or in any manner that is likely to cause confusion. Nothing contained on the Services should be construed as granting any right to use any trade names, trademarks, service marks, logos, copyrightable works or other content, information and materials without the express prior written consent of the owner.

12. DISCLAIMER OF WARRANTIES.

THE SERVICES ARE PROVIDED “AS IS” WITHOUT WARRANTY OR CONDITION OF ANY KIND AND WE DO NOT PROVIDE ANY WARRANTY THAT THE SERVICES WILL BE FREE FROM ERRORS OR INTERRUPTION. YOUR USE OF THE SERVICES IS AT YOUR OWN RISK. THE

FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

13. LIMITATION OF LIABILITY.

NEITHER WE NOR OUR AFFILIATES AND ANY RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, REPRESENTATIVES, LICENSORS, SUPPLIERS AND SERVICE PROVIDERS (COLLECTIVELY, THE "AFFILIATED ENTITIES") WILL BE LIABLE FOR: (A) ANY LOST PROFITS, REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COST OF COVER, OR PUNITIVE DAMAGES; OR (B) AGGREGATE LIABILITY OF ALL AFFILIATED ENTITIES, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEEDING THE GREATER OF (I) THE TOTAL AMOUNT PAID BY YOU TO US IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CAUSE OF ACTION FOR DAMAGES, OR (II) FIFTY DOLLARS (\$50.00). YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE SERVICES (INCLUDING ANY APPS OR THIRD PARTY MATERIALS) IS TO STOP USING THE SERVICES. ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS AGREEMENT) ARE MADE ON BEHALF OF BOTH US AND THE AFFILIATED ENTITIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

14. INDEMNITY.

You will defend, indemnify and hold harmless us and the Affiliated Entities, and their respective successors and assigns, from and against all claims, liabilities, damages, judgments, awards, losses, costs, expenses and fees (including attorneys' fees and expenses) arising out of or relating to: (a) your use of, or activities in connection with, the Services (including all Submissions); and (b) any violation or alleged violation of this Agreement by you.

15. TERMINATION.

This Agreement is effective until terminated. We may terminate or suspend your use of the Services at any time and without prior notice, for any or no reason, including if we believe that you have violated or acted inconsistently with this Agreement. Upon any such termination or suspension, your right to use the Services will immediately cease, and we may, without liability to you or any third party, immediately deactivate or delete your user name, password and account, and all associated materials, without any obligation to provide any further access to such materials. Subject to the limitations and other provisions of this Agreement: (a) the representations and warranties of the parties contained herein will survive the expiration or termination of this Agreement; and (b) any provision that, in order to give proper effect to its intent, should survive such expiration or termination, will survive the expiration or termination of this Agreement for the period of time necessary to give proper effect to the intent of the provision.

16. GOVERNING LAW; ARBITRATION; CLASS ACTION WAIVER.

This Agreement and your activities under it, are governed solely by and shall be construed solely in accordance with the laws of the United States without regard to its principles of conflicts of law regardless of your location.

Except for disputes that qualify for small claims court, any controversy or claim arising out of or related to this Agreement will be resolved through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury. You agree that any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. You agree that we and you are each waiving the right to trial by a jury, and you are agreeing to give up any legal right you may have to participate in a class arbitration or class action. If you do not want to be bound by this arbitration provision, you may opt out without prejudice or penalty. In order to opt out of this arbitration provision, you must notify us in writing that you do not want to resolve disputes with us by arbitration, and such notice should be delivered by e-mail to rhonda@buildertradein.com: Legal Department, within thirty (30) days of the earlier of: (a) the date you first use or access the Services; and (b) the date you click or tap any button or box marked “accept,” “agree” or “ok” (or a similar term) in connection with this Agreement (including registering your account).

Arbitrations conducted pursuant to this Agreement will be administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules and Mediation Procedures (Commercial Rules). In the event the Commercial Rules conflict with any provision of this Agreement, the terms of this Agreement will control. A party will initiate an arbitration under this Agreement by providing notice and a demand for arbitration to the other party according to the Commercial Rules. The parties will work together to agree on the appointment of an arbitrator within twenty (20) days of the initiation of the arbitration. If the parties cannot agree on an arbitrator, one will be appointed according to the Commercial Rules.

For arbitrations outside of California, the arbitrator shall have the authority to award attorney's fees and costs to the prevailing party if such an award is allowed under applicable law. For arbitrations within California, the arbitrator shall not have the authority to award attorney's fees and costs to a claimant who does not prevail against.

17. INFORMATION OR COMPLAINTS.

If you have a question or concern regarding the Services, please send an e-mail to rhonda@buildertradein.com. You may also contact us by calling us at (480) 219-4480 . Please note that e-mail communications are not necessarily secure. Accordingly, you should not include personal or payment information or other sensitive information in your e-mail correspondence with us.

California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

18. COPYRIGHT INFRINGEMENT CLAIMS.

The Digital Millennium Copyright Act of 1998 (DMCA) provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. If you believe in good faith that materials available through the Services infringe your copyright, you (or your agent) may send us a written notice by mail, e-mail or fax, requesting that we remove such

material or disable access to it. If you believe in good faith that someone has wrongly submitted to us a notice of copyright infringement involving content that you made available through the Services, you may send us a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. See <http://www.copyright.gov/> for details. Notices and counter-notices must be sent in writing to our Designated Agent as follows:

Builder trade In Program.

12911 E Corrine Dr

Scottsdale, AZ 85259

United States

Phoenix, Arizona

E-mail: rhonda@buildertradein.com

Telephone: (480) 219-4480

We suggest that you consult your legal advisor before sending a DMCA notice or counter-notice. It is our policy to terminate, in appropriate circumstances, a user's right to use the Services if we decide they are repeat infringers.

19. EXPORT CONTROLS.

You are responsible for complying with United States export controls and for any violation of such controls, including any United States embargoes or other federal rules and regulations restricting exports. You represent, warrant and covenant that you are not: (a) located in, or a resident or a national of, any country subject to a U.S. government embargo or other restriction, or that has been designated by the U.S. government as a “terrorist supporting” country; or (b) on any of the U.S. government lists of restricted end users.

20. MISCELLANEOUS.

This Agreement does not, and will not be construed to, create any partnership, joint venture, employer-employee, agency or franchisor-franchisee relationship between you and us. If any provision of this Agreement is found to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provision. You may not assign, transfer or sublicense any or all of your rights or obligations under this Agreement without our express prior written consent. We may assign, transfer or sublicense any or all of our rights or obligations under this Agreement without restriction. No waiver by either party of any breach or default under this Agreement will be deemed to be a waiver of any other breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular will have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term “including” or variations thereof in this Agreement will be construed as if followed by the phrase “without limitation.” This Agreement, including any terms and conditions incorporated herein and any addenda hereto, is the entire agreement between you and us regarding its subject matter, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and us relating to such subject matter. Notices to you (including notices of changes to this Agreement) may be made via posting to the Services or by e-mail (including in each case via links) to the most recent e-mail address that you have provided to us, or by regular mail to the most recent mailing address that you have provided to us. Without limitation, a printed version of this Agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. We will not be responsible for any failure to fulfill any obligation due to any cause beyond our reasonable control.

