

## Fluid Market, Inc. Terms and Conditions

**FLUIDMARKET.COM IS OWNED AND OPERATED BY FLUID MARKET, INC. (“FLUID”). THESE TERMS AND CONDITIONS, THE PRIVACY POLICY, AND ALL POLICIES POSTED ON OUR SITES, SET OUT THE TERMS ON WHICH FLUID OFFERS YOU ACCESS TO AND USE OF OUR SITES, SERVICES, APPLICATIONS (“APPLICATION”) AND TOOLS (COLLECTIVELY, “SERVICES”). BY ENTERING, DOWNLOADING, ACCESSING OR USING THE SERVICES, YOU WILL AUTOMATICALLY BE CONSIDERED A FLUID USER (“USER”). AS A USER, YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THESE TERMS AND CONDITIONS (“TERMS”), INCLUDING ANY UPDATES AND AMENDMENTS THERETO, AND ANY ADDITIONAL POLICIES AND THE FLUID PRIVACY POLICY ([WWW.FLUIDMARKET.COM/PRIVACY](http://WWW.FLUIDMARKET.COM/PRIVACY)) REFERENCED HEREIN OR THROUGH THE APPLICATION. IF YOU DO NOT AGREE WITH THESE TERMS, PLEASE DO NOT USE THE SERVICES AND UNINSTALL THE APPLICATION FROM YOUR MOBILE DEVICE AS YOU HAVE NO RIGHT TO ACCESS OR USE THE SERVICES.**

**PLEASE READ THESE TERMS CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS, LIMITATIONS, EXCLUSIONS AND DISPUTE RESOLUTION REQUIREMENTS. BY ACCESSING OR USING THE SERVICES, YOU AGREE THAT (I) YOU HAVE READ AND UNDERSTOOD THESE TERMS; (II) YOU AT LEAST 18 YEARS OLD AND ABLE TO ENTER INTO LEGALLY BINDING CONTRACTS; (III) YOU AGREE TO BE LEGALLY BOUND WITHOUT LIMITATION, QUALIFICATION OR CHANGE; (IV) YOU AGREE TO ABIDE BY THESE TERMS; AND (V) IF YOU ACCEPT OR AGREE TO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THESE TERMS.**

**PLEASE UNDERSTAND HOW THE LAWS WORK IN YOUR AREA PRIOR TO USING THE SERVICES. THERE MAY BE A LOCAL LAW THAT RESTRICTS YOUR ABILITY TO LIST ITEMS ON FLUID SO PLEASE REVIEW LOCAL LAWS BEFORE LISTING.**

**LAST UPDATED: July 1, 2018.**

### **I. About.**

Fluid is an online platform or marketplace that allows Users to advertise, offer and rent just about anything in a variety of pricing formats and locations. Fluid does not own or manage any property listed through the Services. Fluid is not a party to any rental or other agreement between Users. The actual contract is between the borrower and lender. Unless otherwise provided, Fluid’s responsibilities are limited to enabling the Services and serving as a limited agent (and limited power of attorney for insurance purposes) for Users listing items available for renting (“Rental”) for the purpose of accepting payments from Users borrowing the Lender’s items (“Borrower”).

While Fluid may provide pricing, rental, delivery, shipping, listing and other guidance in our Services, such guidance is solely for information purposes only and you may decide to follow it or not. Also, while we may help facilitate the resolution of disputes through our Services, Fluid has no control over and does not guarantee the existence, quality, safety or legality of items advertised and offered; the truth or accuracy of User’s content or listings; the ability of Users to rent items; the ability of Users to pay for items; the ability of Users to use an item; the existence of User insurance coverage; or that a User will actually complete a rental or transaction or return an item.

### **2. Using Fluid; License; Termination of Usage.**

- a. Usage. In connection with using or accessing the Services, you will not:
  - i. Engage in any commercial use of the Services unless expressly permitted by Fluid;

- ii. Copy, post, reproduce, display, list or upload content or items in inappropriate categories or areas on the Services;
  - iii. Breach or circumvent any laws, third-party rights or our systems, policies or determination of your account status;
  - iv. Use our Services if you are not able to enter into legally binding contracts or are temporarily or indefinitely suspended from using our Services;
  - v. Fail to pay for items rented to you, unless you have a valid reason as set out in a Fluid policy and permitted by Fluid;
  - vi. Fail to deliver items rented by you or rented with you, unless you have a valid reason as set out in a Fluid policy or otherwise permitted by Fluid;
  - vii. Manipulate the price of any item or interfere with any other User's listings;
  - viii. Post false, inaccurate, misleading, defamatory, or libelous content;
  - ix. Distribute viruses or other harmful technologies that hurt either Fluid or other Users;
  - x. Use any robot, program, spider or other automated means to access our Services for any reason;
  - xi. Interfere with, circumvent or inappropriately use our Services and the underlying infrastructure and technical systems;
  - xii. Commercialize any of the Services;
  - xiii. Collect and use information about Users without their express, written consent;
  - xiv. Contact any User of the Services for purposes other than asking a question related to a listing or item;
  - xv. Register yourself for more than one Fluid account;
  - xvi. Register an account for someone other than yourself;
  - xvii. List any item that you do not yourself own or have permission to rent;
  - xviii. Take any action to undermine the rating system of any User, listing or item;
  - xix. Transfer your account to any third party without Fluid's consent;
  - xx. Distribute unsolicited emails, texts and communications to Users; or
  - xxi. Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material.
- b. License. Users are granted a limited, revocable, non-exclusive license to access the Services and the content therein solely for the purpose of advertising a listing or item, searching for an item, renting or researching an item through the Services. The license to use the Services only extends to the uses expressly described herein. The license to use the Services granted in these Terms does not include the right of collection, aggregation, copying, scraping, duplication, display or derivative use of the Services or any content or underlying databases. Unauthorized use of the Services is not permitted.
- c. Termination of Usage. If, in our sole discretion, any User submits unsuitable material to our Services or into the Fluid database, misuses the Services, any item or our online system or is in material breach of these Terms, we reserve the right to terminate a User's account or listing immediately without any refund. In addition, if Fluid becomes aware of or receives a complaint (or multiple complaints) from any User or third party regarding a User's listing, Borrower's action or rental practices that, in our sole discretion, warrants the immediate removal of such User's listing or item from the Services, then we may immediately terminate such Borrower's listing or User's account without notice to the User and without refund. Fluid has no duty to investigate complaints and may act in its sole discretion in making determinations regarding accounts, listings, items and the Services. No listings on the Services can be transferred to another third party or User.
- d. Text Messages. By creating a Fluid account, you agree that the Service may send you information and marketing material via email, mail, voice calls and SMS. This includes the sending of informational text (SMS) messages as part your use of the Service. You may opt-out of receiving text (SMS) messages from Fluid at any time by texting the word STOP to the relevant short or long code from the mobile device receiving the messages. You acknowledge that opting out of receiving text (SMS) messages may impact your use of the Service.
- e. Location Information. In many instances, Fluid (and individual Lenders) may use location based services and/or global positioning services. By agreeing to use the Services, you consent to the use

of location technologies and waive any claims you may have against Fluid or another User related to such usage.

### 3. **Lenders.**

- a. **Listings.** If you have an item that you would like to rent with Fluid's Users, you may create a listing through the Service. Once a Borrower accepts your listing and confirms a rental, you have officially created a "Transaction" through Fluid. When listing an item, you agree that:
  - i. You are responsible for the accuracy and content of the listing and item offered.
  - ii. Fluid may take some time to make your listing available to Users. (It may not be immediate.)
  - iii. Content that violates any of Fluid's policies may be deleted in Fluid's sole discretion.
  - iv. The appearance or placement of listings in search and browse results will depend on many factors, in Fluid's sole discretion.
  - v. Some advanced listing options may be available to you.
  - vi. Your listing must be truthful and represent the item in a manner in which a Borrower can rely upon. Fluid will not tolerate inaccurate or misleading listings.
  
- b. **Items.** You may list any item that is not a Prohibited Item, as defined below. Fluid may remove items or listings at any time. Although Fluid can determine an item is prohibited at any time, currently, prohibited Items include:
  - i. Adult only goods or services (Includes pornography, bestiality, offers or solicitations or illegal prostitution, adult toys)
  - ii. Alcohol, cannabis or tobacco
  - iii. Animals and animal parts
  - iv. Artifacts and grave-related items
  - v. Counterfeit currency and stamps, replica or pirated items
  - vi. Defective, mechanically damaged, unsafe or harmful items
  - vii. Drugs and drug paraphernalia
  - viii. Embargoed goods from prohibited countries
  - ix. Firearms, weapons, and knives, including pepper spray, replicas, and stun guns, ammunition, clips, cartridges, gunpowder
  - x. Fireworks and explosives
  - xi. Food and healthcare items
  - xii. Gift cards, food stamps, WIC vouchers, governmental assistance
  - xiii. Government documents, IDs, and licenses
  - xiv. Government, transit, and shipping-related items – examples include airplane operations manuals, subway employee uniforms, and U.S. Postal Service (USPS) mailbags
  - xv. Hazardous, restricted, or regulated materials – examples include batteries, fireworks, and refrigerants
  - xvi. Human remains and body parts
  - xvii. Information- personal, confidential or identifying
  - xviii. Items encouraging illegal activity
  - xix. Medical devices and instruments – examples include contact lenses, pacemakers, and surgical instruments
  - xx. US military items not demilitarized in accord with Defense Department policy
  - xxi. Offensive material
  - xxii. Pesticides
  - xxiii. Police-related items
  - xxiv. Recalled items
  - xxv. Stolen property, property with serial number removed/altered, burglary tools, lock picking devices
  - xxvi. Unpackaged or adulterated food or cosmetics
  - xxvii. Unsanitized bedding and clothing

- c. Damage to Items. Lenders may file a claim with Fluid for any damage incurred during a Transaction. Please contact Fluid Customer Care at [CustomerCare@fluidmarket.com](mailto:CustomerCare@fluidmarket.com) for additional information.

4. **Borrowers.**

- a. Rental Agreement. We ask that you return an item just like OR BETTER than you received it. Fluid is a community and we hope that you will engage in a Transaction with respect for your fellow Users. If you confirm a Transaction, you are responsible for completing all of the requirements necessary for the Transaction, including payment. By confirming a Transaction, you agree that you have:
  - i. Read the full item listing before confirming a Transaction;
  - ii. You understand you are entering into a legally binding contract to rent an item when you confirm a Transaction.
  - iii. Fluid is not a part of the rental between the Lender and the Borrower. Fluid is a marketplace, online intermediary and sharing platform only.
  - iv. You are authorizing Fluid to charge your Card, as defined below, for any Transaction fees and the Fluid Fee.
- b. Returning an Item. There is a thirty (30) minute grace period associated with all Transactions. If you as a Borrower keep an item past the agreed upon return time without the Lender's consent and you have exceeded the thirty (30) minute grace period (the grace period is timed by and controlled in the discretion of the Lender), you agree that Fluid, in its sole role as limited collection agent for Lender, may charge your Card to collect the hourly set forth for the applicable to the Transaction.

5. **Security Deposit.** Lenders may choose to include security deposits in their listing ("Security Deposit"). Each listing will specify if a Security Deposit is required. Any disputes must be handled directly between the Borrower and the Lender. Lenders can use the Security Deposit to pay any amounts owed for a reservation under these Terms. Fluid will use its reasonable efforts to assist in a dispute between a Lender and Borrower related to a Security Deposit but Fluid is not responsible for administering or accepting any claims by Users related to Security Deposits and disclaims any and all liability in this regard. In some instances, a Security Deposit may be a pre-authorization for a specified amount on you Card, as defined below.

6. **Ranking System.** Users may post reviews, comments, photos, videos, and other content; send e-cards and other communications; and submit suggestions, ideas, comments, questions, or other information, so long as the content is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights (including publicity rights), or otherwise injurious to third parties or objectionable, and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam" or unsolicited commercial electronic messages. You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of a card or other content. Fluid reserves the right (but not the obligation) to remove or edit such content, but does not regularly review posted content.

7. **Insurance.**

- a. Unless otherwise provided in these Terms, Fluid does not provide liability insurance protection for Users. In the event that Fluid elects to provide insurance coverage for an Item, both Borrower and Lender must participate in and complete the Fluid claims process. Fluid must be notified of all claims within 72 hours of occurrence. Fluid reserves the right to deny any claims that are not timed within the 72 hour claim period. In addition, Fluid reserves the right to disallow coverage for any claims filed if the Users fail to provide Fluid with any information necessary or required to process any claim. In the event that Fluid does not affirmatively state in writing that it is providing coverage for a reservation, Users are solely responsible for obtaining insurance coverage sufficient to protect their items. In some instances, Users have the right to deny Fluid insurance coverage. In the event that Fluid denies coverage, does not provide coverage or User declines coverage, Users agree that they have or will obtain the appropriate insurance coverage sufficient to cover the items they list or borrow through the Services and will maintain adequate insurance coverage through the return of the item to the owner. Further, Users agree to provide us with copies of relevant proof of insurance upon request.
- b. Fluid does not provide insurance coverage for mechanical damage to items.

8. **Vehicles.** All Users must be 21 years of age and satisfy Fluid's safe driver guidelines to rent a vehicle on Fluid. The following uses of the vehicle are prohibited and constitute breach of these Terms.
- a. Vehicles rented on Fluid shall not be used:
    - i. By anyone who is not the User conducting the reservation or approved by Fluid, in writing, as an authorized user.
    - ii. By anyone whose driving license is suspended in any jurisdiction.
    - iii. By anyone under the influence of any drug or alcohol.
    - iv. By anyone who obtained the vehicle or extended the reservation period by giving Fluid false, fraudulent or misleading information;
    - v. In furtherance of any illegal purpose or under any circumstance that would constitute a violation of law other than a minor traffic violation.
    - vi. To carry persons or property for hire.
    - vii. To push or tow anything or to teach anyone to drive.
    - viii. In any race, speed test or contest.
    - ix. To carry dangerous or hazardous items or illegal material.
    - x. Outside of the United States or the geographic area indicated elsewhere in the Terms or rental transaction.
    - xi. When loaded beyond capacity as determined by the manufacturer of the vehicle.
    - xii. On unpaved surfaces.
    - xiii. To transport more persons than the vehicle has set belts, or to carry persons outside the passenger compartment.
    - xiv. To transport children without approved child safety seats as required by law.
    - xv. When the odometer has been tampered with or disconnected.
    - xvi. When the vehicle's fluid levels are low, or it is otherwise reasonable to expect you to know that further operation would damage the vehicle.
    - xvii. In a manner that causes damage to the vehicle due to inadequately secured cargo.
    - xviii. After an accident with the vehicle unless and until you summon the police to the accident scene.
  - b. In the event that a User violates these Terms, such User shall be responsible for all damage and claims that result from the prohibited conduct and insurance coverage is void if you violate these Terms.
  - c. Lender's must ensure (and represent and warrant to Fluid and the Borrower) that all vehicles listed through the Services are safe and mechanically sound. Additionally, all vehicles must be properly registered, insured and maintained in accordance with all applicable state laws and requirements, must maintain the state required minimum insurance coverage on any motorized vehicle that is listed and rented on Fluid.
  - d. Lenders (and Fluid) may assess additional fees to Users to cover additional fees associated with the vehicle or reservation. These fees include: fuel and refueling charges, applicable sales, use and other taxes, all traffic, parking, tolls, cleaning fees, penalties, impound fees, forfeitures, penalties, court costs, towing, impoundment, smoking remediation fees, storage charges, and other expenses involving the vehicle against Fluid or the Lender. Both the Lender and Fluid reserve the right to repossess the vehicle at any time. Borrowers agree to reimburse the Lender for any expenses incurred in locating and recovering the vehicle if a Borrower fails to return it or if the Lender elects to repossess the vehicle under these Terms. In the event that a vehicle is repossessed, any items in the vehicle will be retained for 30 days starting on the repossession date. After 30 days, Fluid and/or the Lender have the right to destroy, discard or dispose any property left in the vehicle and Borrower waives any right to such property.
  - e. Lenders may install a GPS tracking device on all vehicles and the Borrower waives any claims they may have against Fluid and the Lender as a result of the usage of such device.
9. **Fees and Payments.**
- a. **Fluid's Fees.** Fluid will charge a sharing fee ("Fluid Fee") payable by Borrowers who book an item through the Services. The Fluid Fee is deducted from the Transaction Fees from the item before remitting the balance to the Lender. The Fluid Fee covers the use of the Services and platform, insurance costs and credit card processing and is calculated as a percentage of the total Transaction amount. The current percentage used is 20%. Taxes may be charged in addition to the Fluid fee, if applicable. The Fluid Fee is charged when you confirm your Transaction and is nonrefundable. Even if you cancel your Transaction, you will not receive a refund for the Fluid Fee.

- b. Payments. Lenders hereby appoint Fluid as their limited payment collection agency solely for the purpose of accepting payment for the Transaction. Fluid is not a party to the agreement between any Users. At the time you book a listing or item, you agree that Fluid may pre-authorize your credit card(s) ("Card") on file for any booking requested. When you return your item to the Lender, Fluid will charge you for the Transaction. Users authorize Fluid to store your preferred Card number and relevant information and charge your Card for your Transactions. If your Card expires or the account number is changed, please update your account immediately. Lender is solely responsible for any taxes that may be due as a result of such payment or Transaction. All Transactions that are processed Monday-Sunday of each week are sent to Users the following Tuesday via bank transfer.
- c. Facilitation of Payments. All payments are facilitated through a third-party payment processing service (e.g. Stripe, Inc. "Stripe") and additional terms may apply. Fluid may replace its third party payment processing services without notice to Users. Charges shall only be made through the Services. Cash payments are strictly prohibited. By agreeing to Fluid's Terms, you also agree to be bound by Stripe's Terms of Service and Privacy Policy, which can be found at: [www.stripe.com/us/terms](http://www.stripe.com/us/terms) and [www.stripe.com/us/privacy](http://www.stripe.com/us/privacy). Any breach of Stripe's Terms of Service will be treated as a breach of these Terms. You expressly understand that Fluid shall not be liable for any payments and monetary transactions that occur through your use of the Service and that all monetary transactions are handled by Stripe.
- d. Risk Authorizations. To protect Users and Fluid from risk, Fluid may recommend that some Borrowers allow an additional hold or pre-authorization on their Card. Fluid will notify the Borrower if an additional hold is required as part of a Transaction.

#### 10. **Refunds; Cancellation.**

- a. Refund. If you are a Borrower and encounter a Material Issue with an item, as defined below, Fluid may take the following actions, as determined by Fluid in its sole discretion. All determinations with respect to refunds shall be final and binding on the applicable Lender and Borrower:
  - i. Reimburse you up to the amount paid by you through the Services;
  - ii. Find and book you an alternative item for the remaining duration of your Transaction; or
  - iii. Or find another remedy in the reasonable discretion of Fluid.
- b. Material Issue. "Material Issue" may mean:
  - i. The Lender:
    - 1. Cancels a Transaction shortly before the scheduled start of the Transaction;
    - 2. Fails to provide the Borrower with the reasonable ability to use the item; or
    - 3. Fails to describe the item accurately or misrepresents material facts about the item.
- c. Cancellations.
  - i. Borrower: Borrowers have the right to cancel a Transaction for thirty (30) minutes after confirming a Transaction. Borrowers can also cancel a Transaction by providing the Lender twenty-four (24) hours' notice of a cancellation through the Services. In both of these instances, Borrower will not be charged for the Transaction. If, however, Borrower cancels the Transaction within less than twenty four (24) hours of the confirmed start of the Transaction, Borrower must pay Lender for fifty percent (50%) of the confirmed Transaction. Additionally, the Fluid Fee may be charged to Borrower as part of the cancellation.
  - ii. Lender: Lenders may cancel confirmed listings made through the Services. In such instances, Fluid will charge the Lender a fifteen percent (15%) cancellation fee and credit the monies to the Borrower's Fluid account. Depending on the circumstances and at Fluid's discretion, the Fluid Fee may be charged to the Lender as part of this cancellation.

#### 11. **General Terms.**

- a. Dispute Resolution. Please read this section carefully. It affects your rights and will have substantial impact on how claims you and Fluid have against each other are resolved. You and Fluid agree that any claim or dispute at law or at equity that has arisen or may arise between us relating in any way

to or arising out of this or other agreements with Fluid, your use of or access to the Service, or any products or services sold, purchased or rented through the Services, will be resolved in accordance with the provisions set forth in this Dispute Resolution Section.

- i. Arbitration. You and Fluid each agree that any and all disputes or claims that have arisen or may arise between you and Fluid relating in any way to or arising out of this or previous versions of these Terms, your use of or access to the Services, or any products or services offered, listed, rented or advertised through the Services shall be resolved exclusively through final and binding arbitration, rather than in court. The Federal Arbitration Act governs the interpretation and enforcement of these Terms to arbitrate. The arbitration shall be conducted by the American Arbitration Association ("AAA") under its rules and procedures, including the AAA's Consumer Arbitration Rules (as applicable), as modified by these Terms. The AAA's rules are available at [www.adr.org](http://www.adr.org). YOU AND FLUID AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. UNLESS BOTH YOU AND FLUID AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. **ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.** IF A COURT DECIDES THAT APPLICABLE LAW PRECLUDES ENFORCEMENT OF ANY OF THIS PARAGRAPH'S LIMITATIONS AS TO A PARTICULAR CLAIM FOR RELIEF, THEN THAT CLAIM (AND ONLY THAT CLAIM) MUST BE SEVERED FROM THE ARBITRATION AND MAY BE BROUGHT IN COURT, SUBJECT TO YOUR AND FLUID'S RIGHT TO APPEAL THE COURT'S DECISION. ALL OTHER CLAIMS WILL BE ARBITRATED. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in these Terms. In the event the arbitrator determines the claim(s) you assert in the arbitration to be frivolous, you agree to reimburse Fluid for all fees associated with the arbitration. The arbitrator will render an award within the time frame specified in the AAA rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law.
  - ii. Choice of Law. You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the State of Colorado, without regard to principles of conflict of laws, will govern these Terms and the Service including any claim or dispute that has arisen between you and Fluid, except as otherwise stated in these Terms. In the event that the arbitration provision above is found not to apply to your particular claim or dispute, you agree that any claim or dispute that has arisen or may arise between you and Fluid must be resolved exclusively by a state or federal court located in Denver, Colorado.
- b. Content and Copyright.
- i. Fluid respects copyright law and expects its Users to do the same. If we suspect or believe that Users infringe the rights of copyright holders, Fluid may terminate your account.

- ii. Fluid reserves the right to refuse to post any content, including hyperlinks.
  - iii. Fluid cannot guarantee that listings and items will appear in any specific order on the Service.
  - iv. Fluid does not claim any ownership rights in any User's content. Fluid may, in its sole discretion, permit Users to post, upload, publish, submit or transmit content. By making available any content on or through the Services, Users hereby grant to Fluid a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free license, with the right to sublicense, to use, view, copy, adapt, modify, distribute, license, sell, transfer, publicly display, publicly perform, transmit, stream, broadcast, access, view and otherwise exploit a User's content. You acknowledge and agree that you are solely responsible for all content you post to the Services. Accordingly, you represent and warrant that you have all the necessary rights to use the content you post to the Services and that none of the content that you use will violate any laws or rights of third parties.
- c. Intellectual Property. All trademarks, service marks, logos, trade names, and any other proprietary designations of Fluid used herein are trademarks or registered trademarks of Fluid. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks registered trademarks of their respective parties.
- d. Policy Enforcement. When an issue between a Borrower and Lender arises, we may consider each User's performance history and the specific circumstances in applying Fluid's policies. We may choose to be more lenient with policy enforcement in an effort to do the right thing for all parties.
- e. Verification and Account Security.
- i. Identity. Fluid cannot, and does not, assume any responsibility for, the confirmation of each User's reported identity. We encourage you to communicate directly with the Borrower or Lender through the Service, through even this may not help to verify the identity of a User. Fluid encourages you to investigate and perform diligence in investigating Users and to take other measures to help you verify a Borrower or Lender's identity, including the items and the relevant details of your listing.
  - ii. Account Security. You agree to keep your password and Fluid ID secure and confidential. Please notify us immediately if you believe that your account has been compromised. We discourage you from providing access to your password and Fluid ID to any third parties. However, if you do elect to share your password and Fluid ID with someone other than you, you are responsible for any and all activity and Transactions that the person performs while using your Fluid account.
  - iii. Fluid will not have any liability to any User for any unauthorized Transactions made using any password or Fluid ID. You may incur liability to other Users and Fluid if your password and Fluid ID are used in an unauthorized User.
- f. Modifications. Fluid reserves the right, at its sole discretion, to modify the Services or to modify these Terms, including any fees, at any time and without prior notice. If we modify these Terms, we will either post the modification on the Services or otherwise provide you with notice of the modification. We will also update the date on the top of the Terms. By continuing to use or access the Services after we have posted or otherwise notified you of a modification, you are indicating that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to stop using the Services.
- g. Release. If you have a dispute with one or more Users, you release us (and our affiliates and subsidiaries, and our and their respective officers, directors, employees and agents) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of



this release to include only those claims which you may know or suspect to exist in your favor at the time of agreement to this release.

- h. Limitations on Liability. Regardless of any of the provisions in these Terms, if Fluid is found to be liable, our liability to you or to any third party is limited to the greater of (a) the amount paid for your Transaction; or (b) the amount of fees in dispute not to exceed the total fees, which you paid to Fluid in the past twelve (12) months prior to the action giving rise to the liability; or (c) \$100.00.

- i. Disclaimer:

- 1. The Services are intended to be used to facilitate Lenders and Borrowers connecting and sharing items directly with each other. Fluid cannot and does not control the content contained in any listing and the condition, legality or suitability of any item. Fluid is not responsible and expressly disclaims any and all liability related to any and all listings and items. Accordingly, any rentals, Transactions or items will be made, used and accepted at the User's own risk. Unless expressly agreed to in writing by Fluid, Fluid shall not be responsible for loss or damage to property, material, or equipment belonging to Users, at any point.

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- m. Minors. The Services are intended solely for persons who are 18 years or older. Any access to or use of the Services by anyone under 18 is expressly prohibited. By accessing or using the Services you represent and warrant that you are 18 years or older.
- n. International Use. At this time, the Services are only available to U.S. residents. Please do not use the Services if you are not located within the U.S.
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  - iii. Fluid may provide your information, or otherwise enable distribution of your listing to a third party website. Additional terms and conditions may apply to such distributions, of which you will be notified through your email or account.
  - iv. The Services may contain links and pointers to other third party websites and resources. Links to and from the Services to other third party websites do not constitute endorsements by Fluid. Fluid is not responsible for any such third party websites or content and your use of any such websites will not be governed by these Terms.
- p. Miscellaneous.
  - i. These Terms constitute the entire understanding of the agreement between you and Fluid regarding the Application, Fluidmarket.com website, Services, listings, Transactions and

rentals made via the Services. These Terms supersede and replace any and all prior oral or written understandings or agreements between you and Fluid.

- ii. These Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto. Notwithstanding the foregoing, the parties agree that any merchant card servicer or network shall be a third party beneficiary of the Terms for purposes of enforcing provisions related to payments.
- iii. Except as otherwise provided in these terms, if any provision of these Terms is invalid, void or unenforceable, such provision shall be struck out and shall not affect the validity and enforcement of the remaining provisions. In our sole discretion, Fluid may assign these Terms (the agreement between you and Fluid) , by providing notice of such assignment in accordance with these Terms.
- iv. Headings are for reference purposes only and do not limit the scope or extent of such Section. Fluid's failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches. Fluid does not guarantee it will take action against all breaches of these Terms.
- v. Policies posted on the Fluid Services may change from time to time. Changes take effect when Fluid posts them to the Application, Services or Fluidmarket.com website.
- vi. If you create or use an account on behalf of a business entity, you represent that you are authorized to act on behalf of such business and bind the business to these Terms. Such account is owned and controlled by the business entity.
- vii. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by these Terms.

12. **Contact Fluid.** If you have any feedback or questions for us, please contact Fluid at [www.Fluidmarket.com/contactus](http://www.Fluidmarket.com/contactus).