



## **FTD Florists Online GENERAL TERMS AND CONDITIONS – USA**

### **1. GENERAL DESCRIPTION OF SERVICES**

Florists ' Transworld Delivery Inc ("FTD") will provide your shop with an FTD Florists Online Web site ("Web Site") and maintain the Web site within the "www.ftdfloristsonline.com" Web site on the Internet based on the completed FTD Florists Online Application. If a consumer places an order directly on your Web site, that order will be converted to a Mercury® message and directed to your shop for fulfillment with your shop receiving 100% of the order's value subject to the Web site's Processing Charge.

### **2. FEES/METHOD OF PAYMENT**

Charges for developing, modifying and maintaining a Web site will be as follows:

**a.** A One-time Set-Up Fee is due at the time the set up is accomplished or may be paid in three monthly installments. The Set-Up Fee is as follows:

Standard: \$250 • Advanced: \$500

**b.** A Monthly Maintenance/Marketing Fee for each Web site will be billed on your monthly Clearinghouse Statement. Any portion of a month that your Web site is maintained by FTD will be billed on a pro-rated basis. The Monthly Maintenance/Marketing Fees are currently as follows: Standard: \$69.00 • Advanced: \$99.00

The foregoing fees are subject to change from time to time by FTD as determined within its sole discretion.

**c.** Level upgrades will be charged the incremental Set-Up Fee and Monthly Maintenance/Marketing Fee.

**d.** A Processing Charge of \$3.45 per item as transmitted by Mercury will be charged for all orders placed on your FTD Florists Online Web Site.

**e.** A monthly "City" fee of \$2 per city for the first five cities will be billed on your monthly Clearinghouse Statement for each additional city listing you would like listed in the FTD Florists Online City Search (FTD.COM Link). For additional city listings above five, there will be a flat fee of \$10 total. Other than income taxes imposed, all charges are exclusive of any taxes that may be applicable to such charges, which shall be your responsibility. All charges are in U.S. dollars. All charges for services provided to you will be charged to your Clearinghouse account on a monthly basis and will be payable in accordance with FTD's Clearinghouse rules.

**f.** Online Yellow Pages advertising offer is for a one year term.

**g.** Your monthly maintenance/marketing fee includes the registration and hosting of one domain name. If you terminate the agreement prior to two years from registration of your domain name, you will be responsible for payment of the remaining number of months of the two year registration at a rate of \$4 per month.

### **3. YOUR RESPONSIBILITIES**

To be and remain eligible to participate in FTD's Florists Online Internet service, in addition to paying all charges therefor when due and carrying out your other obligations

as specified in these General Terms and Conditions, you must satisfy the following responsibilities:

- a.** All customer orders or messages received on your Web site are your sole responsibility once sent to you as to all matters, including, but not by way of limitation, all credit card approvals and other requests for credit and all customer contact.
- b.** For Advanced and Standard (with Mercury) Level Sites you must be an FTD Member in good standing actively participating in the Mercury® Network and in compliance with all FTD rules and regulations.
- c.** You must timely provide content to FTD in the form and manner required by FTD and in compliance with all conditions established by FTD to Web site content.
- d.** You must comply with all rules, regulations and policies established by FTD for the Web site or sites , as modified and supplemented from time to time, which are incorporated herein by reference and made a part hereof.
- e.** You will not submit to FTD for inclusion on your Web site any material that infringes upon the proprietary rights of any third party or any way defames any third party or which is considered obscene in any jurisdiction; nor will you engage in any unfair, deceptive or otherwise illegal conduct through your Web site. You will indemnify, defend and hold FTD harmless from any costs or expense of any nature, including reasonable attorney's fees, whatsoever incurred by FTD as a result of any third party claims resulting from content you request be placed upon your Web site and for any activity conducted by you through your Web site. Without limiting the foregoing and notwithstanding any other provision of these General Terms and Conditions, FTD reserves the right, in its absolute discretion, to refuse any content provided by you for inclusion in your Web site. In addition FTD reserves the right, but disclaims any obligation whatsoever to monitor the website content, to either (1) require you to immediately modify the content of such website if, in FTD's sole discretion, it is being used in a manner contrary to law or the intent of these General Terms and Conditions, or (2) immediately terminate your Web site.
- f.** You will only submit for use in the content of your Web site FTD trademarks, trade names, and other FTD proprietary materials in a manner consistent with authorization given to you to use such materials.
- g.** You will be responsible for monitoring your Web site on a reasonable basis and promptly calling to FTD's attention any problems or concern that you have relative to your Web site.
- h.** For Advanced and Standard (with Mercury) Level Sites you are responsible for all orders and messages that are sent to you through your Web site. Your Mercury® terminal must be kept on. Orders coming to your shop through your Web site will bypass a Mercury suspension.
- i.** You must comply at all times with any and all applicable governmental laws and regulations related to your business, products, services fees and charges shown on your FOL website including but not limited to laws relating to fraudulent or deceptive trade practices, and at all times be responsible and pay applicable fees charges and taxes related to your business and sales arising from your FOL site or sites, and indemnify and save harmless FTD from any and all liability or claims related thereto, including reasonable attorney fees and costs as incurred by FTD in defense of such claims.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

Except for your validly held trademarks and trade names, which you hereby license FTD to use on your Web Site, all content provided by you to FTD to be included in your Web

Site shall be deemed to become the property of FTD and you hereby assign all such material to FTD. FTD hereby grants to you a license coterminous with the term of this Agreement to use your Web Site in this manner herein provided. FTD shall be deemed to be the sole and exclusive owner of your Web Site as well as the FTD Web Site and, except for the license granted herein, you shall not be deemed by these General Terms and Conditions or otherwise to obtain any interest in such Web sites or sites or the default FTD URLs associated therewith.

#### **5. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

YOU EXPRESSLY AGREE THAT THE USE OF FTD'S FLORISTS ONLINE INTERNET SERVICE AND YOUR WEB SITE IS AT YOUR SOLE RISK. NEITHER FTD NOR ANY OF ITS AGENTS WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED, OR ERROR FREE, NOR DOES FTD MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. THE SERVICE IS PROVIDED ON A "AS IS" BASIS WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE AND MERCHANTABILITY OR FITNESS FOR AN INTENDED PURPOSE. FTD SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THESE GENERAL TERMS AND CONDITIONS, THE SERVICE TO BE PROVIDED HEREUNDER OR YOUR USE THEREOF. WITHOUT LIMITING THE FORGOING, IN NO EVENT SHALL FTD BE LIABLE TO YOU FOR DAMAGES IN EXCESS OF \$1,000 FOR ANY AND ALL CAUSES OF ACTION ARISING UNDER THESE GENERAL TERMS AND CONDITIONS.

#### **6. TERM AND TERMINATION**

These General Terms and Conditions shall become effective upon FTD's acceptance of your executed copy of the FTD FLORISTS ONLINE Program Enrollment Application or in lieu thereof your commencement of use of the FTD FLORISTS ONLINE program and its benefits with the authorized consent of FTD and, unless sooner terminated pursuant to the terms hereof or by FTD upon not less than thirty (30) days notice, shall remain in effect for one year from date of commencement of use or date of acceptance of your executed copy of the FTD FLORISTS ONLINE Program Enrollment Application, whichever occurs first., and be automatically renewed from year to year thereafter upon the same terms and conditions, subject to the right of termination as hereinafter set forth and the right of either party to terminate without reason, upon written notice to the other at least 30 days prior to the expiration of the first year term or any renewal term. Your FLORISTS ONLINE Program Enrollment shall automatically terminate if you cease to be an FTD member or are suspended under FTD's rules and regulations. FTD may terminate your FLORISTS ONLINE Program Enrollment upon not less than ten (10) days notice to you if you fail to pay any charges due under these General Terms and Conditions or otherwise violate the terms or conditions of these General Terms and Conditions and fail to cure such breach within ten (10) days of receipt of such notice. After one year, you or FTD upon may terminate your FLORISTS ONLINE Program Enrollment not less than thirty (30) days written notice. Termination shall not affect any charges or causes of action arising under these General Terms and Conditions prior to termination. The parties' rights and obligations under Sections 3.f, 4 and 5 of these General Terms and Conditions shall survive termination or expiration of your FLORISTS ONLINE Program Enrollment and be ongoing.

#### **7. AMENDMENT OF AGREEMENT**

FTD may modify any aspect of these General Terms and Conditions without prior notice, including but not limited to its charges for the services provided hereunder and may revise the operating rules for Web Sites on the FTD Web Site at any time and from time to time.

#### **8. ASSIGNMENT OF RIGHTS**

You may not assign your rights or obligations of your membership in FLORISTS ONLINE or agreements hereunder to any other party, without prior written consent of FTD.

#### **9. CHOICE OF LAW, VENUE AND LIMITATION UPON ACTIONS**

You and FTD agree that your FLORISTS ONLINE Program Enrollment upon acceptance by FTD shall in all respects be interpreted, construed, enforced and governed by and in accordance with the laws of the State of Illinois, without regard to the conflicts of laws provisions, and further consent to the exclusive and continuous jurisdiction of the United States District Court for the Northern District of Illinois and The Dupage County Circuit Court, to enforce the terms of your FLORISTS ONLINE Program Enrollment. Any cause of action arising under your FLORISTS ONLINE Program Enrollment must be instituted within one year after the claim or cause of action has arisen or be barred.

#### **10. SALE, TRADE OR RENTAL OF PERSONALLY IDENTIFIABLE INFORMATION TO THIRD PARTIES**

FTD may from time to time elect to sell rent or trade personally identifiable information of your customers to third parties by allowing them to place on your website pages, such as the confirmation page for an order from your customer, third party promotional banners, links or other similar promotional material with third parties that FTD believes might be beneficial to your business and to your customers. These banners or promotional links allow your customers to opt into the promotional advertisement and provide to the third party their personal identifiable information in order to take advantage of a promotional offer to purchase products or services from a third party. If you would like to opt-out of FTD providing such placement of third party promotions that permit access to your customers to provide them with promotional offers from third parties, please follow the procedure outlined in the Opt Out / Modify section below. FTD has provided notice to your customers for such sharing of personally Identifiable Information with third parties on the privacy policy that is placed on your website that FTD hosts as part of the FLORISTS ONLINE program. At all times during which you elect not to opt out of any of the foregoing arrangements and sharing of your customer personally identifiable information, you agree not to assert any claims against FTD and any such third party relating to such arrangements and to release FTD and such third parties from any and all claims or liabilities you may have against FTD or the third party providing such promotional material, arising from or related to the third party promotional material or link on you website or transactions arising therefrom.

#### **11. ORDERS OUTSIDE YOUR LOCAL DELIVERY AREA (I.E. ANOTHER STATE, CITY, OR COUNTY) ARE TO BE TREATED THE SAME AS A WALK-IN CUSTOMER ORDER.**

Simply wire or call out the order to another FTD filling florist of your choice if the order is outside your local delivery area. In the event that no filling florist is available, simply contact the customer to notify them of the order cancellation. Then contact the FTD Florists Online department to receive credit on the order charge of \$3.45.

## **12. OPT OUT/MODIFY**

To unsubscribe or opt out of third party promotions and/or affiliate programs and services or modify your web site content with respect to FTD Online services, please contact FTD Florists Online.

Contact Information:

Toll Free	<b>800-576-6721</b>
E-mail	<b>floristsonline@ftdi.com</b>
Fax	<b>630-724-6178</b>

To unsubscribe or opt out in writing please mail your request to:

Florists' Transworld Delivery Inc.

3113 Woodcreek Drive

Downers Grove, IL 60515

Attn: FTD Florists Online