

FTD DELIVERY SERVICE AGREEMENT

THIS FTD DELIVERY SERVICE AGREEMENT (this “**Agreement**”), is made and entered into as of the date as accepted in writing or electronically by and between FTD, LLC, a Delaware limited liability company (“**FTD**”), and the FTD Member signing below (“**Customer**”). Any use of FTD Delivery Service by Customer constitutes acceptance of this Agreement. FTD and Customer are sometimes individually referred to herein as a “**Party**” and together as the “**Parties.**”

WHEREAS, Customer desires to participate in a program under which FTD will provide a local delivery service (“**FTD Delivery Service**”) to facilitate Customer’s commercial relationship with Consumers (as defined below) as more specifically described in this Agreement and FTD is willing to provide such FTD Delivery Service upon the terms and conditions herein set forth, and

WHEREAS, the term “**Consumer**” for purposes of this Agreement shall be defined as any person or other legal entity that places orders with Customer for local delivery of fresh flowers, fresh flower arrangements and/or other products (“**Products**”), and “**Courier Service**” is the service provided by FTD for local delivery of the Products.

WHEREAS, Customer is willing to agree to such terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Status in FTD.** Upon execution of this Agreement by Customer and acceptance by FTD, (i) Customer shall be an FTD Delivery Service Customer and (ii) Customer agrees to comply with the FTD Standards. In the event that the FTD Standards conflict with the terms of this Agreement, the terms of this Agreement shall govern.
2. **Fees and Payment Terms.** Customer agrees to pay all the fees and charges listed on Exhibit A attached hereto and made a part hereof for the benefits and services provided to it for any of its locations it chooses to utilize as a pick-up location. It is further understood and agreed however that FTD shall have the right to increase any one or more of such fees from time to time during the term of this Agreement at its sole discretion. Charges and fees will be included in Customer’s monthly clearinghouse statement and paid in accordance with FTD clearinghouse rules.
3. **FTD Responsibilities and Services.** FTD shall provide the following services to Customer during the term of this Agreement:
 - (A) **Courier Service.** FTD will provide a Courier Service for local delivery within the zip codes designated by FTD for each Customer pick-up location. These zip codes shall be updated from time to time and shall be provided to Customer in writing and/or via the FTD Delivery Service website. The Courier Service shall be performed by a third party not legally affiliated with FTD.
 - (B) **FTD Delivery Service Website.** FTD will provide a method for Customer to enter the necessary order information and delivery details via a website (“**FTD Delivery Service Website**”) and host such site. Such website will display a record of all orders placed and will provide updates to delivery order status as is updated by the Courier Service. Order updates shall include: order confirmation, delivery confirmation and/or order rejection. Additional updates may be provided as the platform is enhanced over time.

4. **Responsibilities of Customer.**
 - (A) Customer shall abide by the FTD Standards, including clearinghouse rules, as may be amended from time to time by FTD.
 - (B) Customer shall use best efforts to enter all information required in FTD Delivery Service Website accurately so that Courier Service will be able to successfully deliver the order to its intended recipient.
5. **Term and Termination.** This Agreement shall extend for a period of one (1) year from the date hereof and shall automatically renew from year to year thereafter subject to termination effective at the end of the first year or at the end of any renewal year thereafter by either Party providing written notice of such termination to the other at least thirty (30) days prior to the expiration of the first year term or any renewal year. Either Party may terminate this Agreement by written notice thereof effective immediately in the event of a material breach by the other Party of any of its obligations hereunder which is not cured within thirty (30) days of the receipt by the defaulting Party of written notice thereof. FTD may terminate this Agreement at any time upon the delivery of written notice to Customer.
6. **Severability.** The Parties agree that, if any term or provision of the Agreement shall be found to be void or unenforceable as written, in whole or in part, the remainder of this Agreement shall remain in full force and effect. The Parties further agree that, in the event of such finding of unenforceability, it is their intent that the offending term or provision be interpreted and construed in such a manner as will carry out the purpose of the clause to the extent permitted by law.
7. **Waiver of Obligations.** FTD shall not be deemed to have waived or impaired any right, power or option reserved by this Agreement by virtue of any custom or practice of FTD at variance with the terms hereof, or by any failure, refusal or neglect to exercise any right under this Agreement or to insist upon exact compliance by Customer with its obligations hereunder.
8. **Assignment.** Neither this Agreement nor any rights under it may be assigned or otherwise be transferred by Customer in whole or in part, whether voluntarily or by operation of law, including by way of sale of assets, merger or consolidation, or any change in control of the ownership of Customer, without the prior written consent of FTD, and any assignment or attempt to assign this Agreement without the prior written consent of FTD shall be null and void.
9. **Binding Effect.** The Agreement is binding upon the Parties hereto and their permitted assigns and successors in interest, and shall not be modified except by written agreement signed by both Parties.
10. **Choice of Law and Venue.** The Parties agree that the terms of this Agreement and interpretation hereof shall be interpreted, enforced and governed by the laws of the State of Illinois, without regard to its conflict of laws rules, and further, the Parties consent to the exclusive and continuous jurisdiction of the U.S. District Court for the Northern District of Illinois and the DuPage County Circuit Court, to enforce the terms of this Agreement.
11. **Notices.** For purposes of this Agreement, notices required to be made from one Party to another shall be deemed made when such notice is sent via certified mail return receipt requested, Federal Express or other overnight delivery service that provides a written confirmation of delivery at the address of the respective Party listed below or via facsimile transmission with a confirmed delivery or completed transmission receipt for facsimile number listed below for each Party hereto:

FTD, LLC
Attn: President – Florist Division
200 N Lasalle St
Chicago, IL 60601

And with copy to: FTD, LLC
Attn.: Legal Department
200 N Lasalle St
Chicago, IL 60601

Customer: All notices shall be sent to physical and/or email address FTD has on file for the Customer.

12. **Relationship.** The Parties agree that each of them is an independent Party with no authority to act for or on behalf of, or to bind, the other except as expressly provided in this Agreement.
13. **Confidentiality.** By virtue of this Agreement, the Parties may have access to information that is confidential to one another (“**Confidential Information**”). Confidential Information shall include the format, monetary terms, pricing under this Agreement, the volume of service provided under this Agreement, the amounts of net sales or profits made under this Agreement, Customer’s Consumer sales list, and any other information that is clearly designated by a Party as confidential, but shall not preclude any Party from acknowledging the existence of this Agreement. The Parties agree to hold each other’s Confidential Information in confidence at all times. Unless required by law (after notice to the other Party) or unless the other Party has consented in writing, no Party will make each other’s Confidential Information available in any form to any third party (other than to the officers, agents, employees, directors, attorneys, accountants, other advisors or representatives of Customer or FTD who need to know the Confidential Information and agree to comply with this Confidentiality provision). No Party shall use the other’s Confidential Information for any purposes other than carrying out this Agreement. Each Party Agrees to take reasonable steps to insure that Confidential Information is not disclosed or distributed by its employees or agents in violation of this Agreement. In the event of a breach by either Party in this Section 13 (Confidentiality), the non-breaching Party shall be entitled to seek injunctive relief without the necessity of posting any bond.
14. **Indemnification.** Customer agrees to indemnify, defend and hold harmless FTD, and its parents, subsidiaries, agents, affiliates, employees, directors and officers, from any and all liability, claim, loss, damage, demand or expense (including reasonable attorneys’ fees and costs) asserted by any third party due to, arising from, or in connection with: (i) any breach by Customer of this Agreement; (ii) any failure by Customer to comply with any applicable laws or regulations; (iii) Customer’s actual or alleged infringement of any other party’s intellectual property rights, or (iv) Customer’s use of the FTD Delivery Service, except to the extent of FTD’s gross negligence or willful misconduct in providing the FTD Delivery Service.
15. **Force Majeure.** Neither Party will be responsible or liable in any way for its failure to perform its obligations under this Agreement during any period in which performance is prevented or hindered by conditions reasonably beyond its control, acts of God, fire, flood, war, insurrection, embargo, strikes, labor disturbances, explosions, riots, civil disturbances, acts of

terrorism, power failures or interruption, epidemics, pandemics, laws, rules, regulations or orders of any governmental authority or any other cause which is beyond the reasonable control of such nonperforming Party. In the event of such force majeure, the nonperforming Party will use best efforts to recommence its full duties hereunder as soon as it is possible to do so, provided that in the event of nonperformance by reason of force majeure lasting for more than thirty (30) days, the other Party may, but is not obligated to, immediately terminate this Agreement upon written notice to the nonperforming Party.

16. **Limitation of Liability.** Under no circumstances will FTD or its parent and respective affiliates be liable to Customer for any indirect, incidental, consequential, special, punitive or exemplary damages arising from the subject matter of this Agreement, regardless of the type of claim and even if FTD has been advised of the possibility of such damages, such as, but not limited to, loss of revenue or anticipated profits or lost business. In the event of a breach of any or the terms of this Agreement by FTD or its parent or affiliates in carrying out any of the terms of this Agreement, Customer's sole and exclusive remedy shall be recovery of proven direct damages not to exceed the lesser of (1) the fees paid by Customer to FTD under this Agreement during the three months immediately preceding the date of such claim arose, or (2) \$1,000.00.
17. **Warranty Disclaimer.** EXCEPT AS OTHERWISE SET FORTH HEREIN, FTD PROVIDES THE FTD DELIVERY SERVICE ON AN "AS IS" BASIS, AND FTD MAKES NO REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, IN CONNECTION WITH THE FTD DELIVERY SERVICE. FTD SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OR ANY WARRANTY AS TO NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. CUSTOMER ASSUMES ALL RISKS OF USING THE FTD DELIVERY SERVICE. THIS WARRANTY DISCLAIMER CONSTITUTES AN ESSENTIAL AND MATERIAL PART OF THIS AGREEMENT.
18. **Entire Agreement.** This Agreement reflects the entire Agreement between the Parties regarding the subject matter of this Agreement. Except as may be expressly stated in this Agreement, it supersedes and cancels all prior Agreements, statements, representations, understandings, negotiations and discussions, whether oral or written, between the Parties. Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on (nor has it been induced to enter this Agreement based on) any statement, representation, warranty or understanding made prior to this Agreement save to the extent that such statement, representation, warranty or understanding is incorporated into this Agreement.
19. **Authority.** Each Party represents that this Agreement has been duly authorized, executed and delivered by such Party and constitutes a valid and binding obligation of such Party enforceable in accordance with its terms.
20. **Credit Information and Financial Statements.** By signing below, Customer hereby authorizes FTD, its employees and agents to request and obtain credit bureau reports of the Customer for the purpose of establishing, maintaining and enforcing a credit relationship with the Customer in accordance with FTD Standards, as well as policies as amended from time to time, and shall furnish FTD along with this signed Agreement or promptly thereafter, a current copy of its financial statements, unless this requirement is expressly waived by FTD in writing.

**EXHIBIT A
PRICING**

FTD DELIVERY SERVICE PRICING

\$11.99 (Less than 7 miles)

\$14.99 (7-15 miles)

\$20.00 (15-20 Miles)

\$25 (20-25 Miles)

Distance is determined by driving miles to the delivery location.

Cancellations: Customer shall be charged \$10.00 for (a) deliveries cancelled by the recipient or Customer if the driver is already enroute to the pickup location, or (b) any of the reasons set forth in Schedule A.

Return Delivery Fee: Deliveries under 7 miles \$18.00, Deliveries 7-15 miles \$20.00 Return Delivery Fee can occur if the recipient is not available to receive the delivery or refuses the delivery.

SCHEDULE A

The Cancellation Fee set forth in Exhibit A shall be charged in the event of any of the following:

1. A Force Majeure Event (defined below).
2. Customer failed to notify FTD Delivery Service of delivery order at least one (1) hour prior to requested pickup time ("**Pickup Time**").
3. The delivery order is not properly tagged, assembled and/or available for pick-up at the designated pick-up point at the requested Pickup Time.
4. Customer did not provide an accurate delivery address.
5. Driver has not been able to contact the delivery order recipient as necessary to complete the delivery.
6. The delivery order recipient (i) is not available at the designated location to receive the delivery order at the time of arrival by the driver; (ii) has requested to change the delivery time or location; or (iii) has refused the order (excluding refusal due to damage to delivery order at the fault of the driver).
7. The delivery order is an "**Over-Sized Item**"
8. To the extent applicable, Customer has requested the wrong size vehicle or input the wrong dimensions and/or weight of items in the delivery order and the Items do not fit in the vehicle assigned.
9. The delivery order contains a Prohibited Item (defined below).
10. Customer has notified FTD Delivery Service of further actions, or requested further actions outside of the original delivery order, including requesting (i) delivery outside of the targeted delivery timeline, (ii) driver to return delivery order to pick-up location or other location; (iii) delivery to alternate address; or (iv) further actions outside of the geographic markets agreed upon between FTD and the delivery vendor.

DEFINITIONS.

- A. "**Force Majeure Event**" means the failure to complete a delivery due to fires, floods, hurricanes, earthquakes, explosions, extreme weather, or other elements of nature, natural disasters, pandemics/epidemics, or other "acts of God", strikes, labor disputes, or picketing lockouts (or labor shortages due to such events), transportation embargoes, civil riots, insurrection, acts of any government or agency thereof and judicial action, or infrastructure disasters, or orders or commands of properly constituted authorities preventing, or significantly impairing, drivers from accessing a location or delivery location and/or otherwise completing the delivery services.
- B. "**Prohibited Item**" means:

- i. People
- ii. Anything illegal including, without limitation, recreational drugs and other contraband.
- iii. Any Hazardous Waste, defined as a "solid waste" that meets any of the criteria of the hazardous waste as described in 40 C.F.R. § 261.3.
- iv. Unset precious stones, industrial diamonds, any article that contains more than fifty percent by weight of gold or platinum or any combination thereof in raw form, including, but not limited to, bullion, bars, or scraps of these metals.
- v. Any hazardous material in any quantity.
- vi. Cremated remains, human remains or components thereof.
- vii. Any delivery order to be transported over state lines (i.e., interstate) or over fifty (50) miles if being delivered to and from a location in the State of California.
- viii. Beer, wine, spirits and other alcohol and liquor products and traditional cigarettes, cigars and other any product made or derived from tobacco that is intended for human consumption, and E-cigarettes, vape pens, tank systems and other electronic nicotine delivery systems or any other product regulated and controlled by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB).
- ix. Firearms or weapons of any kind, any firearm or weapon parts, or ammunition in any amount.
- x. Common fireworks.
- xi. Replica or inert explosives or weapons that bear an appearance to actual explosives or weapons.
- xii. Prescription drugs and medicines or regulated over the counter medicine.
- xiii. Oversized Items.
- xiv. All live animals.