

# TERMS OF USE/DISCLAIMER

Welcome to the **Payless Car Rental web site** (the "Web Site"). Please read our Web Site Terms of Use (the "Terms") carefully before continuing on with your use of this Web Site. THIS WEBSITE AND INFORMATION ON IT IS CONTROLLED BY PAYLESS CAR RENTAL IN THE UNITED STATES, PLEASE SEE OUR WEB SITE PRIVACY POLICY FOR FURTHER INFORMATION. These Terms shall govern the use of the Web Site and apply to all Internet traffic visiting the Web Site. If you choose to continue to use or access this Web Site after having the opportunity to read this Terms, you recognize that Payless has provided valuable consideration by offering this Web Site free of charge, and in exchange for that valuable consideration, you agree to the Terms hereof.

THESE TERMS INCLUDE AN AGREEMENT TO SUBMIT CLAIMS EXCLUSIVELY TO INDIVIDUAL (NON-CLASS) ARBITRATION. SEE BELOW.

The Terms are meant to protect all of our Web Site visitors and your use of this Web Site signifies your agreement with these Terms. **IF YOU DO NOT AGREE WITH THESE TERMS, DO NOT USE OR ACCESS THIS WEB SITE.** Payless reserves the right, in its sole discretion, to modify, alter or otherwise update these Terms at any time. If you continue to use the Web Site, check the footer for notice of changed Terms. If the footer indicates that the Terms have been changed, immediately read them. By choosing to continue to use or access this Web Site after we have posted notice of such modifications, alterations or updates, and after you have had the opportunity to read the revised Terms, you agree to be bound by such revised Terms.

In accordance with our goals, this Web Site will provide links to many other web sites, that may or may not be affiliated with this Web Site and/or **Payless**, and that may have terms of use that differ from, or contain terms in addition to, the terms specified here. Your access to such web sites through links provided on this Web Site is governed by the terms of use and policies of those sites, not this Web Site.

## PRIVACY

Registration data and certain other information about you is subject to our Privacy Policy. For more information, please review our full Privacy Policy.

## TRADEMARKS, COPYRIGHTS AND RESTRICTIONS

This Web Site is controlled and operated by **Payless Car Rental, Inc., 6 Sylvan Way, Parsippany, NJ 07054**. All content on this Web Site, including, but not limited to text, images, illustrations, audio clips, and video clips, is protected by copyrights, trademarks, service marks, and/or other intellectual property rights (which are governed by U.S. and worldwide copyright laws and treaty provisions, privacy and publicity laws, and communication regulations and statutes), and are owned and controlled by **Payless or its affiliates**, or by third party content providers, merchants, sponsors and licensors (collectively "Providers") that have licensed their content or the right to market their products and/or services to **Payless**. Content on this Web Site or any web site owned, operated, licensed or controlled by the Providers is solely for your personal, non-commercial use. You may print a copy of the content and/or information contained herein for your personal, non-commercial use only, but you may not copy, reproduce, republish, upload, post, transmit, distribute, and/or exploit the content or information in any way (including by e-mail or other electronic means) for commercial use without the prior written consent of **Payless or the Providers**. You may request consent by faxing a request to **Payless** at (973) 496-5510. Without the prior written consent of **Payless or the Providers**, your modification of the content, use of the content on any other web site or networked computer environment, or use of the content for any purpose other than personal, non-commercial use, violates the rights of the owners of the **Payless** Web Site and/or the Provider copyrights, trademarks or service marks and other proprietary rights, and is prohibited. As a condition to your use of this Web Site, you warrant to **Payless** that you will not use our Web Site for any purpose that is unlawful or prohibited by these Terms, including without limitation the posting or transmitting any threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material. If you violate any of these Terms, in addition to any other remedies **Payless or its Providers** may have, your permission to use our Web Site immediately terminates without the necessity of any notice. **Payless** retains the right to deny access to anyone at its discretion for any reason, including for violation of these Terms. You may not use on your web site any trademarks, service marks or copyrighted materials appearing on this Web Site, including but not limited to any logos or characters, without the express written consent of the owner of the mark or copyright. You may not frame or otherwise incorporate into another web site any of the content or other materials on this Web Site without prior written consent of **Payless**.

## LINKS

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## DISCLAIMER OF WARRANTIES AND LIABILITY

THIS DISCLAIMER OF WARRANTIES AND LIABILITY ("DISCLAIMER") APPLIES ONLY TO YOUR FREE USE OF THE WEB SITE.

THIS DISCLAIMER DOES NOT APPLY TO, FOR EXAMPLE, YOUR PURCHASE OF ANY PRODUCT OR SERVICE FROM PAYLESS, NOR TO ANY RENTAL.

THIS DISCLAIMER ALSO DOES NOT APPLY TO, FOR EXAMPLE, OUR OFFER OR ADVERTISEMENT OF ANY PAYLESS PRODUCT, SERVICE, OR RENTAL, INCLUDING THE CONTENT OF ANY OFFER OR ADVERTISEMENT ON THE WEB SITE.

THESE TERMS ARE NOT A CONTRACT FOR SALE, AND THIS WEB SITE IS NOT A "GOOD" WITHIN THE MEANING OF THE UNIFORM COMMERCIAL CODE. INSTEAD, THIS WEBSITE IS PROVIDED TO YOU FOR FREE. THIS WEB SITE IS PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. **PAYLESS** DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER **PAYLESS**, ITS AFFILIATED OR RELATED ENTITIES, NOR THE PROVIDERS, NOR ANY PERSON INVOLVED IN THE CREATION, PRODUCTION, AND DISTRIBUTION OF THIS WEB SITE WARRANT THAT THE FUNCTIONS CONTAINED IN THIS WEB SITE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVER THAT MAKES THE CONTENT AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU AGREE THAT WE MAY CHANGE OR DISCONTINUE THE SERVICES IN OUR SOLE DISCRETION AND WITH NO PRIOR NOTICE TO YOU.

You agree that our sole obligation to you is to provide the Web Site as-is until we decide to modify or discontinue it. You agree that unless we do something that is (a) grossly negligent, reckless, or an act of knowing or intentional misconduct or (b) a violation of a consumer protection statute in connection with the Web Site, we will not be liable to you or to any third party for your use of the Web Site.

## INDEMNIFICATION

You are fully responsible for how you use this Web Site. You may not share your log-in information with anyone else, but if you do you are fully responsible for how they use the Web Site too. You agree to indemnify, defend, and hold harmless **Payless and the Providers**, its and their officers, directors, employees, service providers, vendors, affiliates, agents, licensors, and suppliers from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from any violation by you of these Terms.

## THIRD PARTY RIGHTS

These Terms are for the benefit of **Payless and its Providers**, its and their officers, directors, employees, affiliates, agents, licensors, and suppliers. Each of these individuals or entities shall have the right to assert and enforce these Terms directly against you on its or their own behalf.

## JURISDICTIONAL ISSUES

Unless otherwise specified, the content contained in this Web Site is presented solely for your convenience and/or information. This Web Site is controlled and operated by **Payless** from its offices within Parsippany, NJ. **Payless** makes no representation that content in its Web Site is appropriate or available for use in other locations. Those who choose to access this Web Site from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. You may not use or export the materials in this Web Site in violation of U.S. export laws and regulations. These Terms shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey, as they are applied to agreements entered into and to be performed entirely within such State.

## WEB SITE DISPUTES

Web Site Disputes include: (a) any claim you may have against Payless in connection with the Web Site, (b) any claim Payless may have against you in connection with the Web Site, and (c) any action to enforce the Terms or to object to the Terms.

All other disputes are Non-Web Site Disputes. Any claim arising from your purchase of a Payless Product or Service is a Non-Web Site Dispute. Any claim arising from the content of any offer or advertisement on the Web Site is a Non-Web Site Dispute.

## WEB SITE DISPUTES – PRE-DISPUTE RESOLUTION

Before filing a lawsuit in connection with any Web Site Dispute (including, but not limited to, in an individual arbitration or in a small claims proceeding), you and Payless agree that we shall give the other party written notice of the claim to be asserted 30 days before initiating a proceeding and make a reasonable good faith effort to resolve the claim. If you are intending to assert a claim against Payless, you must send the written notice of the claim to Attention: Payless Car Rental, Inc., 6 Sylvan Way, Parsippany, New Jersey, 07054 Attn: Legal Department. If Payless is intending to assert a claim against you, we will send the written notice of the claim to you at your address appearing in our records. NO SETTLEMENT DEMAND OR SETTLEMENT OFFER USED IN THIS PREDISPUTE RESOLUTION PROCESS MAY BE USED IN ANY PROCEEDING, INCLUDING AS EVIDENCE OR AS AN ADMISSION OF ANY LIABILITY OR DAMAGES (OR LACK THEREOF).

## **WEB SITE DISPUTE RESOLUTION – VENUE**

You agree to be subject to the jurisdiction of New Jersey for any Web Site Dispute. You agree that any Web Site Dispute will be resolved in New Jersey to the exclusion of any other potential venue.

## **WEB SITE DISPUTE RESOLUTION – ARBITRATION, JURY TRIAL WAIVER**

Neither you nor we will be able to sue in court in connection with a Web Site Dispute. All Web Site Disputes must be resolved through individual (non-class) arbitration. You indicate your acceptance to these Terms, including this agreement to arbitrate, by continuing to use the Web Site after having the opportunity to review these Terms.

You and Payless intend for this to be an agreement for arbitration that can be enforced under both the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1-16, and the New Jersey Arbitration Act (NJAA), N.J.S.A. 2A:23B-1 to -32.

You and Payless waive any rights to maintain other available resolution processes for Web Site Disputes, such as a court action or administrative proceeding, to settle disputes. You and Payless waive any right to a jury trial for Web Site Disputes.

Instead of suing in court, we each agree to settle Web Site Disputes only by arbitration. The rules in arbitration are different. There's no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would.

Any Web Site Dispute shall be determined by arbitration in New Jersey before one arbitrator(s). The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-streamlined-arbitration/>. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. If for any reason, JAMS cannot or will not provide this arbitration, the parties may ask any court of competent jurisdiction to select an arbitrator from a list provided by the parties.

To the extent a party commences any action which includes both Web Site Disputes and Non-Web Site Disputes, consideration of the Non-Web Site Disputes shall be stayed until the Web Site Disputes are fully arbitrated. Then, any Web Site Disputes will be considered by any court of competent jurisdiction.

If you are an individual (instead of, for instance, a partnership, corporation, or other form of entity or non-natural person), in the event that (1) your claim is less than \$10,000, and (2) you are able to demonstrate that the costs of arbitration will be prohibitive as compared to costs of litigation, Payless will pay as much of your filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive as compared to the cost of litigation.

## **WEB SITE DISPUTE RESOLUTION - NO CLASS ACTIONS**

You agree that you will not file a class action against **Payless or its Providers**, or participate in a class action against **Payless or its Providers**, in any Web Site Dispute. You agree that you will not file or seek a class arbitration, or participate in a class arbitration against **Payless or its Providers**, in any Web Site Dispute.

## **SEVERANCE OF INVALID TERMS**

If any provision of these Terms shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and shall not affect the validity and enforceability of any remaining provisions. Notwithstanding anything to the contrary, if the class action waiver of these Terms is deemed unenforceable, the agreement of the parties to engage in arbitration shall likewise be deemed stricken.

## **ENTIRE AGREEMENT**

The provisions and conditions of these Terms, and each obligation referenced herein, represent the entire Agreement between **Payless** with respect to your use of this free Web Site, its affiliated or related entities, and you, and supersede any prior agreements or understandings not incorporated herein. In the event that any inconsistencies exist between these Terms and any future published terms of use or understanding, the last published Terms or terms of use or understanding shall prevail.

## **ANY RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY PAYLESS CAR RENTAL, INC.**