

## **TERMS OF USE**

### **PLEASE READ THE FOLLOWING TERMS OF USE AND DISCLAIMERS CAREFULLY BEFORE USING THIS WEBSITE.**

Max International, LLC (“Max,” “we,” “us” or “our”), as a convenience to you, grants you access to our website, accessible via [www.max.com](http://www.max.com) (the “Site”), conditioned on your acceptance of the terms, conditions and notices contained herein (these “Terms of Use” or “Agreement”). For purposes of these Terms of Use, “Content” means, collectively, any content, including, without limitation, any text, software, source code, applications, specifications, images, audio files, articles and other information or content available through the Site.

These Terms of Use are effective as of February 4, 2015.

### **ACCEPTANCE OF TERMS**

Please read these Terms of Use and the Site’s Privacy Policy [[add link to privacy policy](#)] (the “Privacy Policy”) carefully. You agree that Max may modify these Terms of Use and the Privacy Policy at any time and from time to time, with or without notice to you, and that you are responsible for regularly reviewing both. By accessing or using the Site, you agree to these Terms of Use, and you consent to the collection and use of information as described in the Privacy Policy, without limitation or qualification, as if you had signed them. If you do not agree to these Terms of Use and the Privacy Policy, you must exit the Site immediately and discontinue any use of any Content.

### **USE OF SITE**

The Site is for your personal use. You may not (i) modify, copy, distribute, transmit, display, perform, reproduce, publish, license, reverse engineer, decompile, disassemble, create derivative works of, transfer or sell any Content, other than for your use of the Site as expressly permitted in these Terms of Use; (ii) access or attempt to access any systems or servers on which the Site is hosted or modify or alter the Site in any way; (iii) forge headers, create a false identity or otherwise manipulate identifiers in order to deceive others or disguise the origin of any Content transmitted to or via the Site; or (iv) use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any business being conducted on the Site.

You may display and, subject to any expressly stated restrictions or limitations relating to specific material, electronically copy, download and print hard copy portions of the material from different areas of the Site solely for your own use. Any other use of materials on the Site, including, but not limited to, the modification, reproduction, distribution, republication, display or transmission of any Content, without prior written permission of Max is strictly prohibited.

All rights and interests not expressly granted to you by the terms hereof are reserved by Max and any third-party licensors of the Content. Nothing contained herein shall be construed as conferring to you by implication, estoppel or otherwise, any license or right under any patent, copyright, trademark or any other intellectual property right of Max or any third party.

## **COPYRIGHTS**

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## **TRADEMARKS**

All trademarks, service marks, trade names and trade dress, whether registered or unregistered, (collectively, the "Marks") that appear on the Site are proprietary to Max or other respective owners that have granted Max the right and license to use such Marks. You may not display or reproduce the Marks other than with the prior written consent of Max, and you may not remove or otherwise modify any trademark notices from any Content.

## **NOTICES AND PROCEDURES FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT**

Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to the Site's designated agent. **ALL INQUIRIES NOT RELEVANT TO OR NOT COMPLYING WITH THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE.**

Max respects the intellectual property of others and asks users of and visitors to the Site to do the same. Max will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws. Upon receipt of notices complying with the DMCA, Max will act to remove or disable access to any material found to be infringing or found to be the subject of infringing activity and will act to remove or disable access to any reference or link to material or activity that is found to be infringing.

If you believe that your work has been copied in a way that constitutes copyright infringement, please provide Max with ALL of the following information:

1. a physical or electronic signature of the person authorized to act on behalf of the owner of the exclusive copyright that is allegedly infringed;
2. a description of the copyrighted work that you claim has been infringed;
3. a description of where on the Site the allegedly infringing material is located;
4. your address, telephone number and email address and all other information reasonably sufficient to permit Max to contact you;

5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law;
6. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Notices of claimed copyright infringement should be directed to [legal@max.com](mailto:legal@max.com).

**IMPORTANT NOTE: THE PRECEDING INFORMATION IS PROVIDED EXCLUSIVELY FOR NOTIFYING MAX THAT YOUR COPYRIGHTED MATERIAL MAY HAVE BEEN INFRINGED. ALL OTHER INQUIRIES, SUCH AS PRODUCT RELATED QUESTIONS AND REQUESTS, OR QUESTIONS ON PRIVACY, WILL NOT RECEIVE A RESPONSE THROUGH THIS PROCESS.**

### **TERM & TERMINATION**

These Terms of Use are applicable to you upon your accessing the Site. These Terms of Use may be modified, altered, amended or updated by Max without notice at any time for any reason. Your continued use of the Site after such modifications, alterations, updates, or amendments, as the case may be, signifies your agreement to be bound by such modifications, alterations or updates. Max shall have the right to immediately issue a warning, suspend or terminate your access to the Site and terminate this Agreement. Max's rights under the preceding sentence shall be exercisable in its sole and absolute discretion, including without limitation based on your violation of the terms of this Agreement, or any Max policy applicable to you (including, without limitation, (i) the Associate Application and Agreement between you and Max, (ii) the Statement of Policies and Procedures to which you are bound as an Associate of Max, (iii) the Max privacy policy). You may terminate your account at any time in your sole discretion by contacting Max at its customer service department, followed by a written notice of termination sent by you to Max as a confirmation. The provisions relating to Copyrights, Trademarks, Disclaimer, Limitation of Liability, Indemnification, Governing Law, Arbitration, Exceptions to Agreement to Arbitrate, No Class Actions and General shall survive any termination of these Terms of Use.

### **THIRD PARTY LINKS**

In an attempt to provide increased value to visitors, the Site may contain links to other sites on the Internet that are owned and operated by third parties other than Max (the "External Sites"). Even if the third party is affiliated with Max, Max has no control over the External Sites, all of which have separate privacy and data collection practices, independent of Max. Max has no responsibility or liability for these independent policies or actions and is not responsible for the privacy practices or the content of such websites. The External Sites are only for your convenience and therefore you access them at your own risk, and you may be subject to the terms and conditions and the privacy policies imposed by such third parties. Links do not imply that Max sponsors, endorses, is affiliated with or associated with, or has been legally authorized to use any trademark, trade name, service mark, design, logo, symbol or other copyrighted materials displayed on or accessible through the External Sites. Nonetheless, Max seeks to protect the integrity of the Site and the links placed upon it and therefore requests any feedback on not only the Site, but for sites it links to as well (including if a specific link does not work).

You should contact the site administrator or webmaster for those External Sites if you have any concerns regarding such links or the content located on such External Sites.

### **REQUIREMENTS FOR LINKS TO THE SITE**

Unless otherwise agreed to expressly by Max in writing, you may only provide a hyperlink to the Site on another website if you comply with all of the following: (a) the link must: (i) be a “text-only” link clearly marked “Max International”, “Max Products” or by the name of an individual Max product offered or discussed on the web page to which the link leads or (ii) “point” to the URL <http://www.Max.com> and not to other pages within the Site; (b) the link, when activated by a web browser, must lead to a full-screen display of the Site and not display the Site as a “frame” on the linking web site; (c) the location, appearance, and other aspects of the link must not be such as to suggest that Max is associated with, or a sponsor or endorser of, the website on which the link appears; and (d) the location, appearance and other aspects of the link must not be harmful to or dilute the goodwill associated with the Max name and its trademarks.

The consent to links placed in accordance with the preceding paragraph shall not, in any way, be deemed or held to be a waiver or release by Max of, or suggest a limitation on, its ownership or other rights in any copyrights, trademarks, patents (whether or not registered) or other intellectual property associated with the Site. Max reserves the right to revoke its consent to any link at any time in its sole discretion.

### **DISCLAIMER**

Max makes no representations or warranties about Max products or services provided via the Site, the accuracy or completeness of the Site’s Content or the content of any External Sites. The Site does not knowingly collect information from and is not directed towards or intended to be used by children under the age of thirteen (13) years old. Accordingly, Max does not filter advertisements or other Content that children may view through the Site or External Sites, and children could receive content and materials from the Internet and/or advertising that are inappropriate for children.

THE SITE AND ANY CONTENT, PRODUCTS OR SERVICES PROVIDED VIA THE SITE, INCLUDING LINKS, ARE PROVIDED "AS IS" AND “AS AVAILABLE” AND WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, MAX DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, MALWARE AND WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. MAX DOES NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE SITE WILL BE UNINTERRUPTED OR SECURE FROM UNAUTHORIZED ACCESS OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES THE SITE AVAILABLE ARE FREE OF VIRUSES, MALWARE OR OTHER HARMFUL COMPONENTS OR SECURE FROM UNAUTHORIZED ACCESS. MAX DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE OF THE MATERIALS IN THE SITE IN TERMS OF THEIR COMPLETENESS, CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, RELIABILITY OR

OTHERWISE. AS A CONDITION OF YOUR USE OF THE SITE, YOU WARRANT TO MAX THAT YOU WILL NOT USE THE SITE FOR ANY PURPOSE THAT IS UNLAWFUL OR PROHIBITED BY THESE TERMS OF USE. MAX DISCLAIMS ALL RESPONSIBILITY FOR ANY LOSS OF DATA ENTERED INTO OR GENERATED BY THE SITE OR ITS RELATED SYSTEMS, WHETHER DUE TO ELECTRONIC OR MECHANICAL FAILURE OR OTHERWISE, AND WHETHER OR NOT SUCH FAILURE OCCURS ON SYSTEMS MAINTAINED BY MAX OR IN CONNECTION WITH THE SITE.

YOU ARE SOLELY RESPONSIBLE FOR IMPLEMENTING ANY SECURITY MEASURES OR PROCEDURES TO DEFEND YOURSELF AND YOUR SYSTEMS FROM ANY MALICIOUS SOFTWARE OR CODE, TO ENSURE THE ACCURACY OF DATA INPUT AND OUTPUT FROM THE SITE, AND FOR MAINTAINING A MEANS EXTERNAL TO THE SITE FOR THE RECONSTRUCTION OF ANY LOST DATA.

#### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL MAX OR OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, LICENSORS AND THIRD PARTY PARTNERS, BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER, EVEN IF MAX HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION UNDER CONTRACT, TORT, OR ANY OTHER THEORY, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCTS OR SERVICES PROVIDED VIA THE SITE, UNAVAILABILITY OR NONPERFORMANCE OF THE SITE, ERRORS, OMISSIONS, VIRUSES AND MALICIOUS CODE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, OR THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IN NO EVENT SHALL MAX'S LIABILITY FOR DAMAGES ARISING OUT OF OR RELATING TO YOUR USE OF THE SITE EXCEED TEN DOLLARS (\$10).

#### **OUTAGES AND UNAVAILABILITY**

Max may routinely schedule system downtime to upgrade and maintain the Site and for other purposes. Additionally, system or software failures may cause unscheduled service interruptions from time to time. Max bears no liability for any unavailability of the Site or for any data lost as a result of planned or unplanned system outages and downtime or any delay in transmission, mistransmission, misdelivery, or nondelivery of data resulting from such system outages or downtime, including any outages or downtime resulting from the acts of or problems arising with any Internet service provider or other third-party, or problems affecting Internet infrastructure or networks of which the Site may be a part.

#### **ASSUMPTION OF RISK BY USER**

YOU ASSUME AND SHALL BEAR ALL RISKS AND RESPONSIBILITIES ARISING FROM OR RELATED TO YOUR USE OF THE SITE, INCLUDING WITHOUT LIMITATION, THE RISK OF ANY MISAPPROPRIATION OF INFORMATION OR DATA BY ANY UNAUTHORIZED THIRD PARTY.

## **REGISTRATION INFORMATION**

In consideration of your use of the Site, you agree: (i) all information provided by you regarding yourself and your business organization required to register with the Site (the "Registration Information") will be true, correct, and complete; and (ii) promptly upon any change in the Registration Information, you will update your registration with the Site so that it continues to be true, correct and complete. If any of your Registration Information is untrue, inaccurate, or incomplete, or if at any time Max suspects that your Registration Information is untrue, inaccurate, or incomplete, Max may take action, in its sole and absolute discretion, to suspend or terminate your account and deny you the use of the Site or access to the Site.

## **PASSWORD AND LOG-IN INFORMATION SECURITY**

You agree that you are responsible for maintaining the confidentiality of your password and log-in information related to the Site, and agree that you alone are fully responsible for any action or activity taken on the Site using that account number or log-in information. You understand that your password and/or log-in information may be used to attribute an electronic communication or other transmission to you (including, without limitation an electronic signature purporting to bind you to a contract) and, therefore, you agree that you shall not disclose your password or log-in information to third parties. If you learn of any unauthorized use of your password or other log-in information or other breach of security regarding the Site, you agree to immediately notify us of such event. Notwithstanding any such notification, it is understood that Max bears no liability and shall not be responsible, under any circumstances, for any fraudulent purchases on the Site that are made by anyone using your password or log-in information.

## **INTERFERENCE WITH THE SITE**

You agree to not take any action that imposes an undue burden upon the infrastructure used to run the Site, including without limitation the use of so-called "dns" attacks or by sending unsolicited e-mail (i.e. "Spam"). You further agree that you will not at any time interfere with the proper working of the Site, whether through the use of any system, procedure, device, software, program, code, routine or otherwise.

## **MISPRICING AND INCORRECT PRODUCT INFORMATION**

In the event a product or service is listed for sale on the Site, but any pricing or other product information is listed incorrectly (due to typographical error or otherwise), Max shall have the right, without notice, to refuse, reject or cancel orders placed for the product or service subject to such errors, whether or not such order has been confirmed or the appropriate credit card has been charged. In a case where a credit card has been charged for such an order, and then later canceled, Max shall issue a credit in the amount of the charge to the appropriate credit card account at the time of cancellation.

## **INTERNATIONAL DISCLAIMER**

Max cannot ensure and does not claim that the Content of the Site is suitable for viewing or downloading in any country outside of the United States. You understand and agree that accessing the Content may be contrary to law in certain countries or for certain individuals and that Max shall bear no responsibility or liability for any such unlawful access. You, and each person linking to the Site through you, agree that when accessing the Content while outside the U.S., you do so solely at your own risk. You agree that you will take all necessary measures to

ensure that your access to the Site and the Content (including the access by any third party directed to the Site by you, whether directly or indirectly) complies with local laws applicable to such access.

### **QUESTIONS AND FEEDBACK NOT CONFIDENTIAL**

If you or anyone directed to the Site by you, whether directly or indirectly, should volunteer any feedback to Max or its employees, webmasters or other agents, including without limitation feedback in the form of questions, requests, opinions, ideas, data, comments, suggestions, or the like regarding the Site or the Content or in any way arising out of the Site or the Content, you agree that such feedback shall be held as non-confidential and non-proprietary. Max shall have no obligations with respect to any such information and Max shall be free to copy, reproduce, use, disclose, commercialize, exploit and distribute it without limitation. It is further agreed that you give up all intellectual property rights, including any moral, publicity and privacy rights you have in any such information. Max shall have the right to use, without any compensation to you, any such feedback, data, ideas, concepts, know-how or techniques included in such feedback for any lawful purpose whatsoever, in identifiable or de-identified form, including without limitation incorporating ideas contained therein into the Site or developing, manufacturing and marketing products incorporating such information or editing, altering, broadcasting, posting, publishing, copying, disclosing, distributing, incorporating and otherwise using information.

### **APPROPRIATE SUBMISSIONS TO THE SITE**

All information provided by you to Max in connection with or related to your use of the Site shall not: (a) be false, inaccurate or misleading; (b) be obscene or indecent; (c) contain any viruses, worms, Trojans, or other malicious software or code which may damage, adversely interfere with, intercept or expropriate any system, personal information, or other data submitted to or used in connection with the Site; (d) infringe on any person's copyright, trademark, patent or any other intellectual property right of such person or any rights of publicity or privacy of any person; (e) be defamatory, unlawfully threatening or harassing; and (f) subject Max to any liability, claim or loss, or in any way interfere with Max's relationship with its internet service provider(s) or any other supplier. You agree that you shall be responsible for the content of any transmissions made to Max or the Site by you or any person directed to the Site by you, whether directly or indirectly, including its truthfulness and accuracy.

### **INDEMNIFICATION**

You agree to indemnify, defend and hold harmless Max and our officers, directors, employees, agents, licensors and suppliers from and against all losses, expenses, damages and costs, including reasonable attorneys' fees, resulting from (i) your use of the Site (whether or not in accordance with the terms hereof), (ii) your purchase or use of products or services through the Site, or (iii) any breach of this Agreement by you (collectively the matters set forth in clauses (i), (ii) and (iii) being "Claims"). You agree to take any action reasonably requested by Max in connection with the defense of any Claim. Max shall have the right to assume the exclusive control and defense of any Claim at any time. Whether or not Max exercises that right, you shall not settle any Claim with any third-party without the prior written consent of Max.

## **GOVERNING LAW**

Your use of the Site shall be governed in all respects by the laws of the state of Utah, without regard to choice of law provisions.

## **ARBITRATION**

You and Max agree to resolve any claims relating to these Terms of Use through final and binding arbitration, except as set forth under the Exceptions to Agreement to Arbitrate section below.

Before filing any such claim, you agree to try to resolve the dispute informally by contacting Max via email at [legal@max.com](mailto:legal@max.com). Max will also try to resolve the dispute informally by contacting you via email. If a dispute is not resolved informally within fifteen (15) days of submission, you or Max may bring a formal arbitration proceeding in accordance with this section.

The [American Arbitration Association](#) will administer the arbitration under its Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. The arbitration will be held in Salt Lake City, Utah, or any other location we agree to.

## **EXCEPTIONS TO AGREEMENT TO ARBITRATE**

Either party may bring a lawsuit solely for injunctive relief to stop unauthorized use or abuse of the Site or intellectual property infringement (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

In the event that the agreement to arbitrate is found not to apply to you or your claim, you and Max agree that any judicial proceeding will be brought in the federal or state courts of Utah. Both you and Max consent to venue and personal jurisdiction there.

Any cause of action or claim you may have with respect to the Site must be commenced within one (1) year after the claim or cause of action arises.

## **NO CLASS ACTIONS**

You may only resolve disputes with Max on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representative action. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations aren't allowed.

## **JURISDICTIONAL ISSUES**

The Site is controlled and/or operated from the United States and, except as otherwise expressly stated in these Terms of Use, is not intended to subject Max to non-U.S. jurisdiction or laws. The Site may not be appropriate or available for use in some jurisdictions outside of the United States. If you access or use the Site, you do so at your own risk and you are responsible for complying with all local laws, rules and regulations. Max may limit the Site's availability, in whole or in part, to any person, geographic area or jurisdiction that Max chooses, at any time and in our sole discretion.



## **GENERAL**

Max may revise these Terms of Use at any time by updating this page. You should visit this page from time to time to review the then-current Terms of Use because they are binding on you. We may also provide notice to you hereunder by posting announcements to the Site.

Purchases of Max products from the Site are subject to separate purchase terms, which are presented at the time of purchase.

Certain provisions of these Terms of Use may be superseded by expressly designated legal notices or terms located on particular pages of the Site. If any provision of these Terms of Use is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect the effectiveness or validity of any provision in any other jurisdiction, and these Terms of Use will be reformed, construed and enforced in such jurisdiction as if such provision had never been contained herein.

You agree that no joint venture, partnership, employment or agency relationship exists between you and Max as a result of these Terms of Use, the Privacy Policy or any use of the Site. No person, other than the parties hereto, is intended to be a beneficiary of the terms hereof. No person other than the parties to this Agreement shall have any right or standing to enforce this Agreement or any term or provision contained in it.

Max's performance of these Terms of Use is subject to existing laws and legal processes, and nothing contained in these Terms of Use or the Privacy Policy is in derogation of Max's right to comply with law enforcement requests or requirements relating to your use of the Site or information provided to or gathered by Max with respect to such use.

These Terms of Use and the Privacy Policy constitute the entire agreement between you and Max with respect to the Site, and they supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Max with respect to the Site. Max's failure to insist upon or enforce strict performance of any provision of these Terms of Use shall not be construed as a waiver of any provision or right. Neither course of conduct between you and Max nor trade practice shall act to modify these Terms of Use.

We may assign our rights and duties under these Terms of Use to any party at any time without notice to you.

## **NOTICES**

Except with respect to notices of alleged copyright infringement, which must be submitted as described above, and unless explicitly stated otherwise in the Site, you must send all notices or complaints to Max via email at [legal@max.com](mailto:legal@max.com) or mail at 7090 S. Union Park Ave., Suite 500, Salt Lake City, UT 84047.