

# Terms of Use

Last Updated: April 1, 2009

## **THE FOLLOWING AGREEMENT DESCRIBES THE TERMS UNDER WHICH IMPACT CONFECTIONS, INC. OFFERS YOU ACCESS TO OUR WEB SITE AND RELATED SERVICES**

### **I. GENERAL**

These Terms of Use (“TOU”) constitute a legal agreement between you and Impact Confections, Inc. (the “Company”), the provider of this web site and related services (the “Company Site”). Your use of the Company Site is subject to the terms laid out in this document, so you should take the time to fully understand how it governs your relationship with the Company and how it affects the way you use the Company Site. By your continued use of the Company Site, you expressly agree to the terms found in this TOU. This TOU constitutes your entire agreement with the Company regarding the Company Site and governs any and all of your use of the Company Site. It supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and the Company with respect to the Company Site. You agree that the TOU is not intended to confer and does not confer any rights or remedies upon any person other than you and the Company. We may amend the TOU at any time, from time to time, by posting an amended TOU on the Company Site. Any changes to the TOU will become effective immediately upon posting and may be changed without notice to you. This TOU may not be otherwise amended except in a writing signed by you and the Company. If you have questions regarding this agreement please contact the Company through the contact form on the Company Site.

#### ***Section 1.1 Modifications***

From time to time it may be necessary for the Company to update or revise certain provisions of the TOU. By using the Company Site and accepting the TOU, you agree that the Company may modify the terms of the TOU, including, but not limited to, those terms related to the charges (if any) associated with your use of the Company Site. You are responsible for regularly reviewing the latest version of the TOU, and any additional terms and conditions that may be posted. Your continued use of the Company Site constitutes your agreement to all such terms, conditions, and notices. If you do not agree to the changes proposed by the Company, or to any of the terms in the TOU, your only remedy is to stop using the Company Site.

#### ***Section 1.2 Privacy***

Certain information about you is subject to our Privacy Policy. For more information, see our full privacy policy at [www.impactconfections.com](http://www.impactconfections.com). Notwithstanding the foregoing, the Company reserves the right at all times to disclose any information as the Company deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in the Company’s sole discretion. You understand and agree that the Company Site Privacy Policy, including the Company’s enforcement of that policy, is not intended to confer, and does not

confer, any rights or remedies upon any person. We may change our Privacy Policy from time to time, and our changes are effective upon the posting of those changes on the Company Site. This posting may be done without notice to you, as provided in the Privacy Policy.

## II. USING THE COMPANY SITE

### *Section 2.1 Inappropriate Uses*

The Company Site must not be used:

(a) to store, publish, distribute, or otherwise disseminate unlawful material or information including, but not limited to: threatening, harassing, defamatory, obscene, vulgar, indecent, hateful, objectionable, tortuous, libelous, deceptive, or fraudulent information and materials, or information and materials that constitute or give rise to claims of an invasion of another person's privacy;

(b) to conduct any activity that is a violation of any State or Federal law or to request unlawful services or materials;

(c) harm minors in any way;

(d) impersonate any person or entity, including, but not limited to, a the Company employee or representative, or to falsely state or otherwise misrepresent your affiliation with a person or entity;

(e) in the furtherance of any activity that infringes (directly or indirectly) upon the intellectual property rights of others, including, but not limited to, copyrights, trademarks, service marks, trade secrets, and patents;

(f) to interfere with any other party's use and enjoyment of the Company Site;

(g) in any way that deliberately degrades or disables the Company Site or any other computer system or to prevent or impede the delivery of any legitimate data;

(h) to make inappropriate postings to newsgroups, chat rooms, electronic bulletin boards and any other forum on the Company Site or elsewhere; or

(i) by persons under the age of 18 to purchase products without the involvement of a parent or guardian.

You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Many of the features and information on the Company Site are updated on a real time basis and are proprietary to us or are licensed to the Company by third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for content you provide to us) from the Company Site without the prior expressed written permission of the Company or the appropriate third party.

### III. CONTENT

#### ***Section 3.1 License***

The Company grants you a limited license to access and make personal use of the Company Site and not to download (other than page caching) or modify it, or any portion of it, except with the express written consent of the Company. This license does not include any resale or commercial use of the Company Site or its contents; any collection or use of any product listings, descriptions, or prices; any derivative use of this site or its contents; any downloading or copying of account information; or any use of data mining, robots, or similar data gathering and extraction tools. Any unauthorized use terminates the permission or license granted by the Company. You are granted a limited, revocable, and nonexclusive right to create a hyperlink to the home page of the Company ([www.impactconfections.com](http://www.impactconfections.com)) so long as the link does not portray the Company, or its products or services, in a false, misleading, derogatory, or otherwise offensive manner.

Subject to the terms of [Section 3.2](#), the Company does not claim ownership of any information, data, text, communications, software, graphics, or other materials (each, “Content”) you submit or make available for inclusion on the Company Site. However, with respect to submitted Content you may post on the Company Site or communicate to the Company via email or other means, you grant the Company a world-wide, royalty free and non-exclusive license(s) to use, distribute, reproduce, modify, and adapt such Content on the Company Site solely for the purposes of providing the Company Site services. This license exists only for as long as you elect to continue to include, transmit or store such Content on the Company Site and will terminate at the time you remove or the Company removes such submitted Content from the Company Site. You expressly warrant you have the right to grant this license in any Content you upload, store or transmit to or through the Company Site. If you do not have the right to grant such license, you should not be uploading, storing or transmitting such material, and doing so will be a breach of the TOU. You acknowledge that the Company may or may not pre-screen Content, but that the Company and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or move any Content that is available via the Company Site. Without limiting the foregoing, the Company and its designees shall have the right to remove any submitted Content that violates the TOU or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, you acknowledge that you may not rely on any Content created by, or submitted to the Company.

#### ***Section 3.2 Product Submissions***

The Company receives many inquiries and suggestions regarding new product ideas, but does not accept any unsolicited submissions of new products, creative suggestions, ideas, notes, drawings, concepts or other information (each, “Information”). Although we are honored you would think of us, the Company relies on its employees to supply its new product and other creative ideas. The Company has found it necessary to adopt this policy because some companies in our industry have had claims made against them by people who allege that the company used an idea, even though the company had received only the most general of concepts. Since the employees of the Company are constantly working on a number of ideas in many

areas, some of which might be similar to an idea you seek to send to the Company, we cannot accept any outside submissions or the risks associated with these submissions.

If you send the Company any Information despite our request that you do not do so, you agree that any and all Information you send the Company is in the public domain, is not confidential and is sent by you for use by the Company without payment or compensation to you or acknowledgement of the source. For any Information you submit to the Company, you grant the Company a world-wide, royalty free, fully paid-up and non-exclusive license(s) to use, distribute, reproduce, modify and adapt such Information for the sole benefit of the Company. The Company makes no warranty to you, whether express or implied, regarding its use of any Information you may submit to the Company.

### ***Section 3.3 Section Links***

The Company may provide, or third parties may provide, links to other World Wide Web sites or resources. Because the Company has no control over such sites and resources, you acknowledge and agree that the Company is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that the Company shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

### ***Section 3.4 The Company's Intellectual Property Rights***

The Content provided by the Company (that is, Content other than as submitted by site users) on the Company Site, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of the Company or its content suppliers, partners, or affiliates, and is protected by U.S. and international copyright laws. The compilation of all Content on the Company Site is the exclusive property of the Company and is protected by U.S. and international copyright laws. All software used on this site is the property of the Company or its software suppliers and is protected by U.S. and international copyright laws. You acknowledge and agree that the Company Site contains proprietary and confidential information that is protected by applicable U.S. and international intellectual property and other laws. Except as expressly authorized by the Company, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Company Site, including its interface, in whole or in part, and other logos and product and service names that are trademarks of the Company (the "Company Marks"). Unless you have written permission, you agree not to display or use in any manner, the Company Marks.

Any trademarks, logos, service marks, brand identities, titles, characters, graphics, designs, and/or other properties displayed on the Company Site are property of the Company and are protected as registered and unregistered trademarks and copyrights. To protect our brand names and accompanying marks, the Company requires a license agreement or written permission from an authorized agent at the Company, prior to any use of trademarks or copyrights belonging to the Company. Any misuse of trademarks belonging to the Company is strictly prohibited.

#### **IV. WARRANTY AND LIMITATION OF LIABILITY**

**THE COMPANY SITE IS PROVIDED ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE AND OUR SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

**YOU EXPRESSLY UNDERSTAND AND AGREE THAT:**

- A. YOUR USE OF THE COMPANY SITE IS AT YOUR SOLE RISK. OUR SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
- B. THE COMPANY MAKES NO WARRANTY THAT (a) USING THE COMPANY SITE WILL MEET YOUR REQUIREMENTS, (b) SERVICE WILL BE UNINTERRUPTED, SECURE, TIMELY, OR ERROR-FREE, (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OUR SERVICES WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE COMPANY SITE WILL MEET YOUR EXPECTATIONS, AND (e) ANY ERRORS IN THE COMPANY SITE WILL BE CORRECTED.**
- C. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE COMPANY SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.**
- D. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE COMPANY OR THROUGH OR FROM THE COMPANY SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.**

**THE COMPANY SHALL NOT BE LIABLE FOR ANY FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER WHERE SUCH FAILURE RESULTS FROM ANY CAUSE BEYOND THE COMPANY'S REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, MECHANICAL, ELECTRONIC OR COMMUNICATIONS FAILURE OR DEGRADATION. IN NO EVENT SHALL WE OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE**

**COMPANY SITE, OUR SERVICES, OR THIS AGREEMENT HOWEVER ARISING, INCLUDING NEGLIGENCE. OUR LIABILITY, AND THE LIABILITY OF OUR SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO \$250.00.**

## **V. INDEMNIFICATION**

You agree, at your own expense, to indemnify, defend and hold harmless the Company and its employees, representatives, subsidiaries, affiliates, officers, directors, suppliers and agents (collectively, the “Company Indemnified Parties”), against any claim, suit, action or other proceeding against the Company Indemnified Parties, by a third party, to the extent that such claim, suit, action or other proceeding is based on or arises in connection with your use of the Company Site (or the use of any of your sub-accounts) specifically including (i) a violation of the terms set forth in the TOU (ii) a claim that any use of the Company Site by you infringes any third party intellectual property right, is libelous or defamatory, or otherwise results in injury or damage to anyone. You agree to pay any and all costs, damages and expenses, including, but not limited to, reasonable attorneys’ fees and costs awarded against or otherwise incurred by or in connection with or arising from any such claim, suit, action or proceeding attributable to any such claim.

## **VI. ARBITRATION**

Any legal controversy or legal claim arising out of or relating to this TOU or the Company Site, excluding legal action taken by the Company to collect our fees and/or recover damages for, or obtain an injunction relating to, the Company or the Company Site operations, intellectual property, and our services, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party, unless in our sole judgment, the Company wishes to consolidate the legal controversy of two or more parties in any legal action. The arbitration shall be conducted in Colorado Springs, Colorado, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. The Company may seek any interim or preliminary relief from a court of competent jurisdiction in Colorado Springs, Colorado necessary to protect our rights pending the completion of arbitration. Should you file an action contrary to this provision, the Company may recover from you our reasonable attorney fees and costs. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of this site or services or the TOU must be filed within six (6) months after such claim or cause of action arose or be forever barred. Notwithstanding anything else to the contrary in this TOU, the Company shall always have and retains the right to pursue legal action of any kind or nature whatsoever in any appropriate jurisdiction in order to protect our interests.

## **VII. TERMINATION**

You agree that the Company may, *without prior notice*, immediately terminate your access to the Company Site and the Company services. Cause for such termination shall include, but not be limited to, (a) breaches or violations of the TOU or other incorporated agreements or

guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated termination), (d) discontinuance or material modification to the Company service (or any part thereof), (e) unexpected technical or security issues or problems, and (f) extended periods of inactivity. Termination of your the Company services includes (i) removal of access to all the Company services and the Company Site, (ii) removal of access and deletion of all related information, files and content associated with or inside services provided to you by the Company (or any part thereof), and (iii) barring further use of the Company Site and the Company services. Further, you agree that all terminations for cause shall be made in the Company' sole discretion and that the Company shall not be liable to you or any third party for any termination of the Company Site or the Company services.

## VIII. MISCELLANEOUS

### ***Section 8.1 No Agency.***

No agency, partnership, joint venture, or employment is created as a result of this TOU and you do not have any authority of any kind to bind the Company in any respect whatsoever. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

### ***Section 8.2 Savings***

If any provision of this TOU is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this TOU shall otherwise remain in full force and effect and enforceable.

### ***Section 8.3 Notice***

Any notice by us to you may be made via a posting on the Company site or via email or first class mail.

### ***Section 8.4 Choice of Law, Compliance with Applicable Laws***

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The laws of the State of Colorado, excluding its conflicts-of-law rules, govern the TOU and your account. User conduct may be subject to other local, state, national, and international laws. You expressly agree that exclusive jurisdiction and venue for any claim or dispute with the Company Site or relating in any way to your account or your use of the Company Site resides in the courts of El Paso County, Colorado, and you further agree and expressly consent to the exercise of personal jurisdiction in the courts of Colorado in connection with any such dispute including any claim involving the Company or its affiliates, subsidiaries, employees, contractors, officers, directors, telecommunication providers and content providers.

You agree to abide by U.S. and other applicable export control laws and not to transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a national destination prohibited under such laws, without first obtaining, and then

complying with, any requisite government authorization. You further agree not to upload to the Company Site any data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software. This assurance and commitment shall survive termination of this TOU.

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes any portion of this site or access to the Company Site or our services.