

Terms Of Use

TERMS OF USE

Date Revised and Posted: 4/21/2010 ("Effective Date") by Medium Cool Communications, a company.

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2. **DISCLAIMER.** YOU ACKNOWLEDGE AND AGREE THAT THE SITE AND ITS CONTENTS ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND WE DO NOT MAKE ANY, AND HEREBY SPECIFICALLY DISCLAIM ANY, REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SITE OR ITS CONTENTS, INCLUDING, WITHOUT LIMITATION, ANY REGARDING OR ARISING FROM: (I) MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; (II) COURSE OF DEALING, COURSE OF USAGE, OR COURSE OF PERFORMANCE; OR (III) TIMELINESS, ACCURACY, RELIABILITY OR CONTENT OF THE SITE AND ANY INFORMATION PROVIDED THROUGH THE SITE UNDER THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DISCLAIM ANY WARRANTY REGARDING THE PROFITABILITY OF TRANSACTIONS EXECUTED ON THE SITE OR THE RESULTS TO BE OBTAINED FROM THE USE OF THE INFORMATION ON THE SITE, AND INFORMATION ON THE SITE IS NOT INTENDED TO PROVIDE LEGAL, FINANCIAL, ACCOUNTING, TAX OR OTHER ADVICE, AND SHOULD NOT BE RELIED UPON AS PROFESSIONAL ADVICE.

3. **LIMITATION OF LIABILITY.** WE ARE NOT LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, OR ANY OTHER DAMAGES (COLLECTIVELY, THE "DAMAGES"),

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4. YOUR USE OF THE SITE.

4.1 Your Right to Use the Site. We grant you a non-exclusive, personal, and revocable right to access the Site.

4.2 Passwords. You are responsible for protecting the confidentiality of your password(s), and for the acts and omissions of any third party that accesses the Site through use of your password, as if such acts and omissions were your own.

4.3 Changes to the Site and Premium Features. We shall have the right at any time to change or discontinue any aspect or feature of the Site, including, but not limited to, content, hours of availability, and equipment needed for access or use.

5. **CHANGED TERMS.** We shall have the right at any time to amend these Terms of Use, effective immediately upon notice on the Site, and any use of the Site by you after notice is subject to these new amendments. Please note that access to premium site features may be subject to a fee and additional agreement(s), which we will provide to you for your approval

before charging you.

6. EQUIPMENT. You must obtain, pay for and maintain all software, hardware and anything else needed to use the Site.

7. YOUR CONDUCT.

7.1 Lawful Purposes. You shall use the Site for lawful purposes only.

7.2 Intellectual Property. You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works, publicly distribute, publicly display, reproduce, publicly perform, or in any way exploit in any format whatsoever (including, without limitation, print and electronic formats) any of the Site content, without our prior written authorization. You may download copyrighted material for your personal use only.

7.3 Works and Material You Submit to the Site. You shall not upload, post or otherwise make available on the Site any works or material protected by copyright, trademark or other proprietary right without the express written permission of the owner of the copyright, trademark or other proprietary right and the burden of determining that any works or material are not so protected rests entirely with you. For all works or material submitted by you to the Site, you automatically grant, or warrant that the owner of such material has expressly granted, us a royalty-free, perpetual, irrevocable, worldwide, fully-paid up license to use, reproduce, create derivative works, publicly distribute, publicly perform, publicly display, assume any sound recording rights or moral rights of attribution or integrity, transmit, modify, adapt, publish, translate and distribute such material (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed (including, without limitation, print and electronic form, media and technology) for the full term of any copyright that

may exist in such works or materials.

7.4 No Unauthorized Access and Unauthorized Activities on the Site. The Site is only publicly available for the authorized uses described in these Terms of Use. Access to the Site is not authorized for any activities that interfere or have the potential to interfere with our possessory interest in the Site. Unauthorized activities, include, but are not limited to: any access and use of the Site for automated access, screen or data scraping, data acquisition and consolidation, automated offers; using the Site in an attempt to break security, or so as to actually break security of any computer network (including, without limitation, the Site itself); using the Site for unauthorized relays through any third party systems; attempting, in any way, to interfere with or deny service to any user or any host on the Internet; using the Site to engage in unsolicited commercial email, or to add or attempt to add addresses to any mailing list (yours or a third party's); using the Site to engage in flood attacks, which are defined as overburdening a recipient computer system by sending a high volume of spurious data which effectively impedes or totally disables functionality of the recipient system(s), or any other denial of service attacks; furnishing false data on your sign-up form, contract, or online application, including, without limitation, providing fraudulent payment information; actively engaging in or authorizing making the Site or any portion available as part of a "co-branded" or "private label" web site, web service, or Internet access service, or as part of a "channel" through a software or Internet service, or similar arrangements or relationships that offer or provide access to the Site from or through other web sites, web services, or Internet access services.

8. **MONITORING.** We have the right, but not the obligation, to monitor the content of the Site, to determine compliance with these Terms of Use, any other agreement between you and us,

and any operating rules established by us, as well as to satisfy any law, regulation, authorized government request, or trade association guideline. We have the right to edit, refuse to post or remove any material submitted to or posted on the Site. You acknowledge and agree that any communication or material you post or transmit to the Site is, and will be treated as, non-confidential and non-proprietary. Without limiting the foregoing, we shall have the right to remove any material that we find violates these Terms of Use, may cause liability for us, or is otherwise objectionable.

9. TERMINATION AND SURVIVAL. Either we or you may terminate these Terms of Use at any time. Without limiting the foregoing, we shall have the right to immediately terminate these Terms of Use, as to you, by terminating your access to the Site, for our convenience, for any reason or no reason, or for any breach by you of these Terms of Use. You may terminate these Terms of Use by deleting your profile and ceasing to use the Site, but if you use the Site again in the future, then you will have agreed to these Terms of Use again. Sections 1, 2, 3, 7, 8, 10, 11 and 12 survive any termination or expiration of these Terms of Use.

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professional may be necessary for you regarding the evaluation of any specific information, opinion, advice or other content.

12. **GENERAL.** Entire Agreement and Amendments. This Agreement is the entire agreement between us and supersedes all earlier and simultaneous agreements regarding the subject matter.

Governing Law and Forum. All claims regarding this Agreement are governed by and construed in accordance with the Laws of FL, applicable to contracts wholly made and performed in such jurisdiction, except for any choice or conflict of Law principles, and must be litigated in FL, regardless of the inconvenience of the forum, except that we may seek temporary injunctive relief in any venue of our choosing. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. No Waivers, Cumulative Remedies. Our failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of our rights under this Agreement. All of our remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive. Severability. If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect our original intent, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions. Captions and Plural Terms. All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.