

Kawasaki Terms of Use

NEW TERMS OF USE

Effective Date: January 29, 2021

Introduction

Please read these Terms carefully before using our websites and any online services, software or apps provided by **Kawasaki Motors Corp., U.S.A.** (“KMC,” “we,” “us,” or “our”) that post a link to these Terms (the “Service”). By visiting or otherwise using the Service in any manner, you agree to the then-posted Terms and any applicable Additional Terms (defined below), agree to be bound by them, and agree that you have read and understood them. You also acknowledge, agree, and consent to our data practices as described in our [Privacy Policy](#) and any Children’s Privacy Policy posted on the applicable portion of the Service.

These Terms affect your legal rights, responsibilities, and obligations; govern your use of the Service; are legally binding; limit KMC’s liability to you; and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service and uninstall Service downloads and applications.**

Additional Terms

In some instances, additional or different terms, posted on the Service, such as the Terms and Conditions of Sale for Kawasaki Motors Corp., U.S.A. Websites, apply to your use of certain parts of the Service (individually and collectively, “Additional Terms”). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise.

Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service as more fully explained [here](#).

Quick Links

We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries, govern.

- **Grants and Limitations of Rights**
 - We only grant you a limited revocable license to use the Service subject to rules and limitations. [More](#)
 - You grant us a broad license to the content you submit and to your profile. You retain ownership of and responsibility for your content. We have the right to manage our Service to keep its content appropriate. [More](#)
 - Your use of our Service is subject to various restrictions designed to protect the Service and users. [More](#)
- **Limitations on Your Remedies**

As permitted by applicable law,

 - We also disclaim most warranties and provide the Service “As Is.” [More](#)
 - Our liability is greatly limited. [More](#)
 - Your equitable or injunctive relief rights are limited. [More](#)
- **Dispute Resolution**
 - As permitted by law, you agree to arbitrate disputes and waive jury trials and class actions. [More](#)

- **Availability of Service**
 - We may change or discontinue our Service, or your right to access it, in whole or in part. [More](#)
 - Our Service is intended for access from and use in the U.S.A. [More](#)

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1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICE AND CONTENT.

A. Ownership. The Service and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names, and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by KMC, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of KMC, our licensors, or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other Intellectual Property, and unfair competition rights and laws to the fullest extent possible. KMC owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

B. Your Rights to Use the Service and Content.

(i) Your right to use the Service and Content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the “**KMC Licensed Elements**”):

- (1) Display, view, use, and play the Content on a computer, mobile or other internet enabled or permitted device (“**Device**”) and/or print one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you;
- (2) Stream the Content using any of the widgets and/or other digital streaming internet video players, if any, provided on the Service;

- (3) Subject to any applicable Additional Terms, if the Service (a) includes a “Send to Friend,” social media sharing, or similar tool that allows you to initiate and send to one or more of your contacts a communication that includes Content, or (b) allows you to post Content to third-party services or your own site or online service, and (c) the tool is operational, (d) you may use the tool to do so; provided, however, that while posting such Content, you do not violate applicable law or third-party rights or reflect negativity on us, and only send Content to recipients you have permission to contact;
- (4) If the Service includes a “Download” link next to a piece of Content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, a trailer, or an RSS feed), you may only download a single copy of such content to a single Device;
- (5) Download, install, and use one copy of any software, including apps, that we make available on or through the Service (“**Software**”) on your Device in machine-executable object code form only, and make one additional copy for back-up purposes; provided, however, that you understand and agree that (i) by allowing you to download the Software, KMC does not transfer title to the Software to you (i.e., you own the medium on which the Software is recorded, but the Software’s owner (which may be KMC and/or its third-party Software licensor) will retain full and complete title to such Software); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Software, except as expressly authorized in these Terms or applicable Additional Terms, without the prior written consent of KMC; (iii) you may not assign, rent, lease, or lend the Software to any person or entity and any attempt by you to sublicense, transfer, or assign the Software will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law;
- (6) If made available to you, obtain a registered personal account (and/or related username and password) on the Service and interact with the Service in connection therewith;
- (7) Link to the Service from a website or other online service, so long as: (a) the links only incorporate text, and do not use any KMC names, logos, or images, (b) the links and the content on your website do not suggest any affiliation with KMC or cause any other confusion, and (c) the links and the content on your website do not portray KMC or its products or services in a false, misleading, derogatory, or otherwise offensive manner, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party or are otherwise objectionable to KMC. KMC reserves the right to suspend or prohibit linking to the Service for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third party; and
- (8) Use any other functionality expressly provided by KMC on or through the Service for use by users, subject to these Terms (including, without limitation, functionality to create and/or post User-Generated Content (as defined below)) and any applicable Additional Terms.

- C. Rights of Others.** In using the Service, you must respect the Intellectual Property and rights of others and KMC. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, *see* [Section 5](#) below.
- D. Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY KMC AND ITS LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*
- E. Third-Party Services.** We are not responsible for third parties or their content, advertisement(s), apps, or sites (“**Third-Party Services**”). For instance, portions of the Service may be integrated into or linked to third-party sites, platforms, and apps that we do not control. Similarly, we may make third-party ads and other Third-Party Services, which we also may not control, available to you on or via our Service. This may include the ability to register or sign into our Services using Facebook, Twitter, or other third-party tools, and to post content on Third-Party Services and sites using their plug-ins made available on our Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-party Services. If you are accessing or using the Service through Apple, Android, or any other platform, these are Third-Party Services. If you access our Apps via Apple, click [here](#) for Additional Terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

Terms Applicable For Apple iOS.

- (i) To the extent that you are accessing the Service through an Apple mobile application, you acknowledge that these Terms are entered into between you and KMC and that Apple, Inc. (“**Apple**”) is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii) The license granted to you by KMC under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (*see*: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to the Service.
- (iii) You acknowledge that KMC, and not Apple, is responsible for providing the Service and Content thereof.
- (iv) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Service.
- (v) To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Service.
- (vi) Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and KMC, KMC, and not Apple, is responsible for addressing any claims you may have relating to the Service, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

- (vii) Further, you agree that if the Service, or your possession and use of the Service, infringes on a third-party's Intellectual Property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such Intellectual Property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple's subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.
- (ix) When using the Service, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology, or service that interacts with the Service.
- (x) Your use of real time route guidance on the Service (if any) is at your sole risk. Location data may not be accurate.

[Return to navigation](#)

2. CONTENT YOU SUBMIT.

- A. User-Generated Content.** You grant us a non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, transferable, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of any material or information you post or submit to us (on or via the Service, or by means other than the Service, including without limitation via our social media pages and accounts such as Facebook, Twitter and LinkedIn) (“**Submissions**”), and derivative works thereof, for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same, all without any obligation to you not required by applicable law, or explicit terms of our [Privacy Policy](#) or applicable Additional Terms. As permitted by applicable law, and subject to any explicit terms of our [Privacy Policy](#) and applicable Additional Terms, you also irrevocably consent to our use and association of your name (and, if part of a Submission, your likeness) in connection with your Submissions and derivatives thereof. As permitted by applicable law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any Submissions, even if a Submission is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section. In addition, we and our successors, assigns, and licensees retain all of the rights held by members of the general public with regard to your Submissions. Our receipt of your Submissions is not an admission of their novelty, priority, or originality, and it does not impair our right to contest existing or future Intellectual Property rights relating to your Submissions.

3. SERVICE AND CONTENT USE RESTRICTIONS.

- A. Service Use Restrictions.** You agree that you will not: (i) use the Service for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting product prices, and selling products); (ii) use any meta tags or any other “hidden text” utilizing any Intellectual Property; (iii) engage in any activities through or in connection with the Service that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any

right of any third party, or are otherwise objectionable to KMC; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any Software or other products, services, or processes accessible through any portion of the Service; (v) engage in any activity that interferes with a user's access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, KMC, or other users of the Service; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the UGC; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Service or other computer systems or networks connected to the Service, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

- B. Content Use Restrictions.** You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, "bot," spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the KMC Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate, or transfer to any third party or on any third-party application or website, or otherwise use or exploit such content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of KMC or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience or the Service.
- C. Availability of Service and Content.** KMC, in its sole discretion and without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason.

4. CREATING AN ACCOUNT.

- A.** If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials, for restricting access to your Device, and for all activity under your account. Usernames and passwords must be personal and unique, must not violate the rights of any person or entity, and must not be offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us [here](#) of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights.
- B.** Accounts may only be set up by an authorized representative of the individual that is the subject of the account. We do not review accounts for authenticity and are not responsible for any

unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

5. **PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT.**

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act (“DMCA”) to identify content or material posted on the Service that is infringing that you would like removed from our Service, or if you are a user whose work has been removed in response to such a notice of infringement and would like to file a DMCA counter-notice, you may submit such notice to us by contacting us [here](#).

6. **NOTICES, QUESTIONS, AND CUSTOMER SERVICE.**

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: Kawasaki Motors Corp., U.S.A., 26972 Burbank, Foothill Ranch, CA 92610. If you have a question regarding the Service, you may contact KMC Customer Support by contacting us [here](#) or calling us at (866) 802-9381. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive Terms or applicable Additional Terms.

7. **PRODUCT SPECIFICATIONS; PRICING; TYPOGRAPHICAL ERRORS.**

We strive to accurately describe our products or services offered on the Service; however, we do not warrant that such specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. As permitted by applicable law, KMC shall have the right to refuse or cancel any orders in its sole discretion. Your orders are offers to purchase subject to our acceptance, which we may reject or cancel subject to refund. If we charged your credit card or other account prior to rejection or cancellation, we will reissue credit to your account. Additional Terms may apply. If a product you purchased or accepted from KMC does not meet your expectations, as permitted by applicable law, your sole remedy is to return it, to cancel the purchase, and receive a credit for the purchase price, subject to the return criteria and other conditions specified in the Terms and Conditions of Sale.

8. **ARBITRATION AND DISPUTE TERMS.**

- A. **Forum Selection/Jurisdiction.** Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the Content, your UGC, these Terms, or any applicable Additional Terms, (collectively, “Dispute”) shall be in Orange County, California. Each party submits to personal jurisdiction and venue in Orange County, California for any and all purposes.
- B. **Pre-Arbitration Notification.** KMC and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated; provided, however, that KMC need not do so in circumstances where its claims of Intellectual Property rights are concerned (“IP Disputes,” with all other disputes referred to as “General Disputes”). The party making a claim – whether you or KMC – shall send a letter to the other side briefly summarizing the claim and a proposal for resolution. If KMC is making a claim, the letter shall be sent, via email, to the email address listed in your KMC account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 8.B. If you are making a claim, the letter shall be sent to Kawasaki Motors Corp., U.S.A., P.O. Box 25252, Santa Ana, CA 92799-5252. For a period of sixty (60) days from the date of receipt of notice from the other party, KMC and you will engage in a dialogue in order to

attempt to resolve the Dispute, although nothing will require either you or KMC to resolve the Dispute on terms with respect to which you and KMC, in each of your and KMC's sole discretion, are not comfortable. If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 8. Either you or KMC, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 8.D) before the expiration of this sixty (60)-day period.

C. Arbitration of Claims. Unless you give us notice of opt-out within five (5) business days of your first use of the Service, addressed to: Terms of Use Opt-Out, Kawasaki Motors Corp., U.S.A., 26972 Burbank, Foothill Ranch, CA 92610, all actions or proceedings arising in connection with, touching upon or relating to any Dispute, or the scope of the provisions of this Section, shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect (the "Rules"). The arbitral hearing shall take place in Orange County, California in accordance with California Code of Civil Procedure §§ 1280 et seq. If the matter in dispute is between KMC and a consumer, the matter shall be submitted to JAMS in accordance with its Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. We may have the right to pay the JAMS fees if required for arbitration to be enforceable. The arbitration shall be a confidential proceeding, closed to the general public; provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award; provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek *pendente lite* relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in Orange County, California or, if sought by KMC, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section; provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Orange County Superior Court or, in the case of you, such other court having jurisdiction over you, which may be made *ex parte*, for confirmation and enforcement of the award.

D. Limitation on Injunctive Relief. AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICE, THEN SUCH LOSSES, DAMAGES, OR INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF OF ANY KIND. THIS MEANS (WITHOUT LIMITATION) THAT, IN CONNECTION WITH YOUR CLAIM, YOU AGREE THAT YOU WILL NOT SEEK, AND THAT YOU WILL NOT BE PERMITTED TO OBTAIN, ANY COURT OR OTHER ACTION THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, UGC, PRODUCT, SERVICE, OR INTELLECTUAL PROPERTY OWNED, LICENSED, USED, OR CONTROLLED BY ANY KMC PARTY (DEFINED BELOW) (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF ANY KMC PARTY.

- E. Governing Law.** These Terms and any applicable Additional Terms, General Disputes, IP Disputes, and any other claim brought by you against KMC or by KMC against you pursuant to this Section 9, or otherwise related to the Service, Content, KMC Licensed Elements, UGC, or other KMC products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of California, U.S.A., without regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 8 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and KMC agree that we intend that this Section 8 satisfies the “writing” requirement of the Federal Arbitration Act. This Section 8 can only be amended by mutual agreement. Either party may seek enforcement of this Section 8 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.
- F. Class Action Waiver.** As permitted by applicable law, both you and KMC waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 8 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.
- G. Jury Waiver.** **AS PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY WAIVE THEIR RIGHT TO JURY TRIAL WITH RESPECT TO ALL CLAIMS AND ISSUES ARISING UNDER, IN CONNECTION WITH, TOUCHING UPON, OR RELATING TO THESE TERMS, THE BREACH THEREOF, AND/OR THE SCOPE OF THE PROVISIONS OF THIS SECTION, WHETHER SOUNDING IN CONTRACT OR TORT, AND INCLUDING ANY CLAIM FOR FRAUDULENT INDUCEMENT THEREOF.**
- H. Small Claims Matters.** Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 8.F.
- I.** The provisions of this Section 8 shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 8 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

9. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.

- A.** AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICE IS AT YOUR SOLE RISK AND THE SERVICE IS PROVIDED ON AN “AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by applicable law, KMC and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “KMC Parties”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, KMC Licensed Elements, UGC or other KMC products or services, except as set forth in subsection C, below.

- B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, KMC PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUS.**
- C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY KMC PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY KMC PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) KMC PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY KMC PARTIES TO THE EXTENT NOT WAIVABLE OR IT CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST KMC PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

10. LIMITATIONS OF OUR LIABILITY.

- A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY KMC PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, KMC Licensed Elements, UGC or other KMC products or services, except, to the extent not waivable under applicable law, for direct damages for personal injury caused by a physical product manufactured, sold or provided by KMC.**
- B. The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if KMC Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).**
- C. AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL KMC PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICE AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT EQUAL TO THE AMOUNT YOU HAVE PAID KMC IN CONNECTION WITH THE TRANSACTION(S) THAT UNDERLIE THE CLAIM(S).**
- D. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) ANY EXPRESS, WRITTEN PRODUCT WARRANTY OR RELATED DISCLAIMERS THAT ARE PROVIDED BY KMC PARTIES OR THEIR SUPPLIERS WITH REGARD TO A PHYSICAL PRODUCT SOLD BY KMC PARTIES TO YOU, OR ANY WARRANTY ON A PHYSICAL PRODUCT TO THE EXTENT REQUIRED BY APPLICABLE LAW; (II) KMC PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY KMC PARTIES TO THE EXTENT NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (III) ANY CAUSE OF ACTION YOU**

MAY HAVE AGAINST KMC PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.

11. UPDATES TO TERMS.

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). EACH TIME YOU SIGN INTO OR OTHERWISE USE THE SERVICE YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN-APPLICABLE TERMS AND CONDITIONS, AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICE (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICE AFTER SUCH NOTICE CONSTITUTES YOUR GOING-FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR SUBSEQUENT USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to subsequent use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised, or additional terms by discontinuing use of the Service.

12. GENERAL PROVISIONS.

- A. KMC's Consent or Approval.** As to any provision in these Terms or any applicable Additional Terms that grants KMC a right of consent or approval, or permits KMC to exercise a right in its "sole discretion," KMC may exercise that right in its sole and absolute discretion. No KMC consent or approval may be deemed to have been granted by KMC without being in writing and signed by an officer of KMC.
- B. Indemnity.** As permitted by applicable law, you agree to, and you hereby defend (if requested by KMC), indemnify, and hold KMC Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any KMC Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC; (ii) your use of the Service and your activities in connection with the Service; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) KMC Parties' use of the information that you submit to us (including your UGC) subject to our [Privacy Policy](#) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by KMC Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, KMC Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. KMC Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior, written consent of an officer of a KMC Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.
- C. Operation of Service; Availability of Products and Services; International Issues.** KMC controls and operates the Service from the U.S.A., and makes no representation that the Service is appropriate or available for use beyond the U.S.A. If you use the Service from other locations,

you are doing so on your own initiative and are responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

- D. Export Controls.** You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.
- E. Severability; Interpretation.** If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.
- F. Investigations; Cooperation with Law Enforcement; Termination; Survival.** As permitted by applicable law, KMC reserves the right, without limitation, to: (i) investigate any suspected breaches of its Service security or its information technology or other systems or networks, (ii) investigate any suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by KMC in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by KMC to comply with law enforcement requests or legal requirements in accordance our [Privacy Policy](#), (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Service, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third party. Any suspension or termination will not affect your obligations to KMC under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Service, or upon notice from KMC, all rights granted to you under these Terms or any applicable Additional Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to KMC in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.
- G. Assignment.** KMC may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of KMC.
- H. Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances, or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or KMC in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

I. California Consumer Rights and Notices. California residents can obtain more information their rights and our privacy practices [here](#).

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California, 95834, or by telephone at (916) 445-1254. Hearing-impaired users can reach the Complaint Assistance Unit at TDD (800) 326-2297 or TDD (916) 322-1700. Their website is located at: <http://www.dca.ca.gov>.

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