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## Terms & Conditions



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# TriMark R.W. Smith Terms & Conditions

Revised as of June 25, 2018

## TriMark Terms & Conditions

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It is a condition of your use of the Website that all the information you provide on the Website is correct, current, and complete. If you choose, or are provided with, a user name, password, or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to the Website or portions of it using your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. TriMark USA has the right to disable any username, password, or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms and Conditions.

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Engage in spidering or harvesting, or participate in the use of software, including spyware, designed to collect data from the Website.

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Stalk, harass or harm another individual.

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Use any means to scrape or crawl any web pages contained in the Website.

Attempt to circumvent any technological measure implemented by us or any of our providers or any other third party (including another user) to protect the Website.

Attempt to decipher, decompile, disassemble, or reverse engineer any of the software or other underlying code used to provide the Website.

Advocate, encourage, or assist any third party in doing any of the foregoing.

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### **Copyright Policy**

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A description of where the alleged infringing material is located.

A statement by you that you have a good faith belief that the disputed use is not authorized by you, the copyright owner, its agent, or the law.

An electronic or physical signature of you or the person authorized to act on behalf of the owner of the copyright interest.

A statement by you, made under penalty of perjury, that the information in the written notice is accurate and that you are the copyright owner or authorized to act on behalf of the copyright owner.

Send correspondence to the Copyright Agent: Corporate Director of Ecommerce, TriMark USA, LLC, 603 West Street, Mansfield MA 02048, 508-399-2400, [info@trimarkusa.com](mailto:info@trimarkusa.com)

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before it was removed or disabled;

A statement under penalty of perjury by you that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and

Your name, physical address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in Massachusetts, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

After we receive your counter-notification, we will forward it to the party who submitted the original claim of copyright infringement. Please note that when we forward the counter-notification, it includes your personal information. By submitting a counter-notification, you consent to having your information revealed in this way. We will not forward the counter-notification to any party other than the original claimant.

After we send out the counter-notification, the claimant must then notify us within 10 days that he or she has filed an action seeking a court order to restrain you from engaging in infringing activity relating to the content that was removed or disabled. If we receive such notification, we will be unable to restore the material. If we do not receive such notification, we may reinstate the material. Please be aware that if you knowingly materially misrepresent that material or activity on the Website was removed or disabled by mistake or misidentification, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

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All posted and printed prices are subject to change.

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To the fullest extent permitted by applicable law, you agree to indemnify and hold harmless TriMark USA and its Affiliates from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to, any actual or alleged breach of these Terms and Conditions by you or anyone using your account, or your use of the Website, including but not limited to your Comments or User Content. If we assume the defense of such a matter, you will reasonably cooperate with us in such defense.

### **Arbitration Agreement & Waiver of Certain Rights**

You and TriMark USA agree that we will resolve any disputes between us through binding and final arbitration instead of through court proceedings. You and TriMark USA hereby waive any right to a jury trial of any Claim. All controversies, claims, counterclaims, or other disputes arising between you and TriMark USA relating to these Terms and Conditions of the Website (each a "Claim") shall be submitted for binding arbitration in accordance with the Rules of the American Arbitration Association ("AAA Rules") applying the law of the State of Massachusetts. The arbitration will be heard and determined by a single arbitrator. The arbitrator's decision in any such arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. You agree that the arbitration will be kept confidential by you and that the existence of the proceeding and any element of it (including, without limitation, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed by you beyond the arbitration proceedings, except as may lawfully be required in judicial proceedings relating to the arbitration or by applicable disclosure rules and regulations of securities regulatory authorities or other governmental agencies.

This arbitration agreement does not preclude TriMark USA from seeking action by federal, state, or local government agencies. TriMark USA also has the right to bring qualifying claims in small claims court. In addition, TriMark USA retains the right to apply to any court of competent jurisdiction for provisional relief, including pre-arbitral attachments or preliminary injunctions, and any such request shall not be deemed incompatible with these Terms and Conditions, nor a waiver of the right to have disputes submitted to arbitration as provided in these Terms and Conditions.

You may not act as a class representative or private attorney general, nor participate as a member of a class of claimants, with respect to any Claim. Claims may not be arbitrated on a class or representative basis. The arbitrator can decide individual Claims. The arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated.

### **Other Provisions**

If any provision of this Section is found to be invalid or unenforceable, then that specific provision shall be of no force and effect and shall be severed, but the remainder of this Section shall continue in full force and effect. No waiver of any provision of this Section of the Terms and Conditions will be effective or enforceable unless recorded in a writing signed by the party waiving such a right or requirement. Such a waiver shall not waive or affect any other portion of this Terms and Conditions. This Section of the Terms and Conditions will survive the termination of your relationship with TriMark USA.

THIS SECTION LIMITS CERTAIN RIGHTS, INCLUDING THE RIGHT TO MAINTAIN A COURT ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO PARTICIPATE IN ANY FORM OF CLASS OR REPRESENTATIVE CLAIM, THE RIGHT TO ENGAGE IN DISCOVERY EXCEPT AS PROVIDED IN AAA RULES, AND THE RIGHT TO CERTAIN REMEDIES AND FORMS OF RELIEF. OTHER RIGHTS THAT YOU OR TRIMARK USA WOULD HAVE IN COURT ALSO MAY NOT BE AVAILABLE IN ARBITRATION.

Any action relating to the use of the Website, catalogs or any transaction with TriMark USA must be brought in the state or federal courts located in Massachusetts. You consent and submit to the personal jurisdiction of such courts for the purposes of any such action.

These Terms and Conditions will be governed by and construed in accordance with the laws of the State of Massachusetts, without giving effect to any conflict of laws rules or provisions.

Under no circumstances will we be held liable for any delay or failure in performance due in whole or in part to any acts of nature or other causes beyond our reasonable control.

If any provision of these Terms and Conditions is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms and Conditions and will not affect the enforceability of any other provisions.

The failure by us to enforce any right or provision of these Terms and Conditions will not prevent us from enforcing such right or provision in the future.

We may assign our rights and obligations under these Terms and Conditions, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law. You may not assign rights and obligations under these Terms and Conditions, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law, without TriMark USA's prior written consent.

These Terms and Conditions and the Privacy Policy constitute the sole and entire agreement between you and TriMark USA regarding the Website and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Website.

For questions related to TriMark USA, contact us at [info@trimarkusa.com](mailto:info@trimarkusa.com) or 1-888-662-6935.

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