

TERMS AND CONDITIONS OF USE

1. INTRODUCTION

Welcome to the “Occupy.com” website (available at <http://www.Occupy.com>) (the “Website”). The Website is owned and operated by Occupy.com, Inc. (“us”, “we” or “our”).

PLEASE READ THESE TERMS AND CONDITIONS OF USE (“**TERMS OF USE**”) CAREFULLY BEFORE USING THE WEBSITE. By using the Website, you signify your agreement to these Terms of Use. If you do not agree to these Terms of Use, you may not use the Website. In addition, when you use any of our current or future services or make donations or purchase products, should we sell them in the future, you will also be subject to our guidelines, terms, conditions and agreements applicable to those services.

2. PRIVACY AND YOUR ACCOUNT

Please review our Privacy Policy, which also governs your visit to the Website, to understand our privacy practices. We reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in our sole discretion.

3. CONSIDERATION

You agree that these Terms of Use are supported by reasonable and valuable consideration, the receipt and adequacy of which you hereby acknowledge, including, without limitation, your access to and use of the Website and data, materials and information available at or through the Website.

4. RESTRICTIONS ON USE; LIMITED LICENSE

All content contained on the Website (collectively, “Content”), such as text, graphics, logos, icons, images, audio and video clips, digital downloads, data compilations, and software, is our property or the property of our licensors or licensees, and the compilation of the Content on the Website is our exclusive property, protected by United States and international copyright laws, treaties and conventions. All software used on the Website is our property or the property of our software suppliers and protected by United States and international copyright laws, treaties and conventions. We are working to open up these rights and are thinking through Creative Commons licenses, but in the meanwhile, the above applies.

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5. USE AND PROTECTION OF PASSWORD AND ID.

We may, in our discretion, assign a password and account ID to you so you can access certain areas of the Website to, among things, purchase products or make comments. Each user who uses such assigned password and ID shall be deemed to be authorized by you to access and use the Website, and we shall have no obligation to investigate the authorization or source of any such access or use. YOU ACKNOWLEDGE AND AGREE THAT AS BETWEEN YOU AND US, YOU WILL BE SOLELY RESPONSIBLE FOR ALL ACCESS TO AND USE OF THE WEBSITE BY ANYONE USING THE PASSWORD AND ID ASSIGNED TO YOU WHETHER OR NOT SUCH ACCESS TO AND USE OF THE WEBSITE IS ACTUALLY AUTHORIZED BY YOU, INCLUDING ALL COMMUNICATIONS AND TRANSMISSIONS AND ALL OBLIGATIONS (INCLUDING FINANCIAL OBLIGATIONS FOR PURCHASES THROUGH THE WEBSITE) THAT MAY RESULT FROM SUCH ACCESS OR USE.

You are solely responsible for protecting the security and confidentiality of the password and ID assigned to you. You shall immediately notify us of any unauthorized use of the assigned password or ID, or any other breach or threatened breach of the Website’s security of which you are aware. You will be responsible for any activity conducted under your assigned password or ID.

6. SYSTEM REQUIREMENTS.

Use of the certain areas of the Website requires Internet access, audio manager software or other software allowing the downloading and storing of audio and audio-visual files in MP3 or other digital format (the “Software”), and, for certain downloadable content, a compatible player device (the “Device”). We may, at any time and from time to time, in our sole discretion, modify, revise, or otherwise change the system requirements for the Website and the format of any downloadable content, in whole or in part, without notice or liability to you.

Internet access, use of the Software, or use of a Device may result in fees in addition to any fees incurred on the Website. Software and Devices may require you to obtain updates or upgrades from time to time. Your ability to use the Website may be affected by the performance of the Software, the Device, or your Internet connection. You acknowledge and agree that it is your sole responsibility to comply with the system requirements of your Software and Device, as in effect from time to time, and to maintain, update, and upgrade your Software and Devices, including the payment of all Internet access, Software, and Device fees without recourse to us.

7. SUBMISSIONS

You may be allowed to post reviews, comments, photographs, and other content; send communications; and submit suggestions, ideas, comments, questions, or other information, so long as none of these materials are illegal, obscene, threatening, defamatory, invasive of privacy, infringing on intellectual property rights, or otherwise injurious to third parties or objectionable and do not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of “spam.” You may not use the Website for any hate speech or the support and/or advocacy of any form of violence against persons, property or otherwise. You may not use a false e-mail address, impersonate anyone, or otherwise mislead as to the origin of any content.

Please do not send us any material that you do not intend to be subject to the User-Generated Content License described in this paragraph. All content described in the immediately preceding paragraph and any and all other information, content or materials that you post or send to us hereinafter collectively is referred to as “User-Generated Content.” If you post or send any User-Generated Content to us, intentionally or unintentionally, we (and such others as we may designate from time to time) shall have a non-exclusive right to use such content without any further permission from you or anyone else. We and our designees also shall have the right (but no obligation) to use the name that you submit, as well as any other name by which you are or may be known, in connection with User-Generated Content. Without limiting the generality of the foregoing, you hereby grant to us a perpetual, non-exclusive, non-commercial, royalty-free, sub-licensable and transferable universal license to use, re-use, reproduce, transmit, print, publish, display, exhibit, distribute, re-distribute, copy, host, store, cache, archive, index, categorize, comment on, broadcast, stream, download, edit, alter, modify, adapt, translate, and publicly perform User-Generated Content, in whole or in part, by all means and in all media now known or hereafter devised for any and all purposes without further notice to you (the “User-Generated Content License”).

You represent, warrant and agree that: you own or otherwise control all of the rights to all User-Generated Content that you post or send to us; that all such User-Generated Content is accurate; use of such User-Generated Content does not violate these Terms of Use, our *Privacy Policy* or the rights of any third party and will not cause injury to anyone; and you will indemnify us and our affiliates and designees from and against all claims arising out of, resulting from or relating to any such User-Generated Content. We have the right (but no obligation) to monitor, edit or remove any activity or content involving you. We have no responsibility, and assume no liability, for any User-Generated Content posted or sent by you or by anyone else.

Each time that you access the Website, or post or submit User-Generated Content, you agree that the User-Generated Content License is ratified and confirmed with respect to such User-Generated Content and all User-Generated Content previously posted or submitted by you.

8. CONTENT LINKED TO THE WEBSITE

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9. DISCLAIMER OF WARRANTIES

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10. INDEMNIFICATION

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11. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES (INCLUDING NEGLIGENCE) SHALL WE BE LIABLE TO YOU OR ANYONE ELSE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE OF ANY KIND OR NATURE WHATSOEVER THAT ARISE OUT OF OR RESULT FROM: (A) THE USE OF, OR ANY INABILITY TO USE, THE WEBSITE OR ANY CONTENT OR FUNCTIONS THEREOF; OR (B) ANY ACT OR OMISSION, ONLINE OR OFFLINE, OF ANY USER OF THE WEBSITE OR ANYONE ELSE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL LOSS, COST, DAMAGE, LIABILITY OR EXPENSE (INCLUDING ATTORNEYS FEES AND COSTS) THAT YOU MAY SUFFER OR INCUR, UNDER ANY THEORY OF LIABILITY, IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF THE AMOUNT PAID BY YOU, IF ANY, FOR THE RIGHT TO ACCESS OR PARTICIPATE IN ANY SERVICES RELATED TO THE WEBSITE OR \$100.00.

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THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS HEREIN AND ELSEWHERE IN THESE TERMS OF USE APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

APPLICABLE LAW MAY NOT ALLOW CERTAIN OF THE EXCLUSIONS, LIMITATIONS, OR DISCLAIMERS OF LIABILITY SET FORTH IN THESE TERMS OF USE, SO SUCH EXCLUSIONS, LIMITATIONS OR DISCLAIMERS MAY NOT APPLY TO YOU.

12. COPYRIGHT COMPLAINTS

We respect the intellectual property rights of others. If you believe that your work has been copied on the Website in a way that constitutes copyright infringement, please follow our attached *Notice and Procedure for Making Claims of Copyright Infringement*.

13. AMENDMENT

We reserve the right, in our sole discretion, to change, modify, add or delete portions of these Terms of Use at any time without notice, and it is your responsibility to review these Terms of Use for any changes. Your use of the Website following any change to these Terms of Use will constitute your assent to and acceptance of the revised Terms of Use.

14. TERMINATION

These Terms of Use are effective until terminated by either you or us. You may terminate these Terms of Use prospectively at any time by discontinuing your access to and use of the Website and destroying all materials obtained from the Website and all related documentation and all copies and installations thereof, whether made under these Terms of Use or otherwise. If you terminate these Terms of Use, you shall notify us by sending an email to info@occupy.com.

We may terminate these Terms of Use (including your access to and use of the Website) without cause and without notice to you, in our sole discretion. Upon termination, you must cease any access to or use of the Website and destroy all materials obtained from the Website and all related documentation and all copies and installations thereof, whether made under these Terms of Use or otherwise. We have adopted and implemented a policy that provides for the termination, in appropriate circumstances, of users who are repeat infringers of copyright.

The provisions of these Terms of Use, which by their nature should survive the termination of these Terms of Use, shall survive such termination.

15. APPLICABLE LAW AND DISPUTES

(a) These Terms of Use are governed by the laws of the State of California, United States, without regard to its choice of law principles. Subject to subsections (b), (c) and (d) below, you consent to the jurisdiction and venue of the state courts in Los Angeles County, California, and the federal courts in the Central District of California for all disputes arising out of or relating to access to or the use of the Website; provided, however, that we may enforce our rights and remedies under these Terms of Use in any appropriate jurisdiction.

(b) YOU AGREE THAT THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THESE TERMS OF USE, THE WEBSITE AND/OR ANY PRODUCTS SHALL BE FINAL AND BINDING ARBITRATION, except that: (i) to the extent that you have infringed upon or violated or threatened to infringe upon or violate our rights or breached these Terms of Use, you acknowledge that arbitration will not be an adequate remedy at law and that injunctive or other appropriate relief may be sought by us in Court in our sole discretion; and (ii) no dispute or claim relating to any transaction you enter into with a third party may be arbitrated.

(c) The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the "JAMS Rules"). Judgment on the award may be entered in any court having jurisdiction. The location of the arbitration shall be in Los Angeles,

California, and the allocation of costs and fees for such arbitration shall be determined in accordance with such JAMS Rules and shall be subject to the limitations provided for in the JAMS Rules. If such costs are determined to be excessive in a consumer dispute, we will be responsible for paying all arbitration fees and arbitrator compensation in excess of what is deemed reasonable. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. IN NO EVENT SHALL ANY CLAIM, ACTION OR PROCEEDING BY YOU AGAINST OR INVOLVING US BE INSTITUTED MORE THAN ONE (1) YEAR AFTER YOUR CLAIM FIRST ACCRUED OR YOU FIRST BECAME AWARE OR REASONABLY SHOULD HAVE BECOME AWARE OF ANY SUCH CLAIM.

16. ELECTRONIC COMMUNICATIONS

When you visit the Website or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on the Website. You agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.

17. MISCELLANEOUS LEGAL PROVISIONS

We may discontinue the Website at any time and for any reason, without notice. We may change the contents, operation, or features of the Website at any time for any reason, without notice.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and us as a result of these Terms of Use or your use of the Website. Nothing contained in these Terms of Use is in derogation of our right to comply with governmental, court, and law enforcement requests or requirements relating to your use of the Website or information provided to or gathered by us with respect to such use. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Our failure to enforce any provision of these Terms of Use or respond to a breach by you or others shall not constitute a waiver of our right to enforce any other provision of these Terms of Use as to that breach or any other.

If any provision of these Terms of Use is invalid or unenforceable under applicable law, the remaining provisions will continue in full force and effect, and the invalid or unenforceable

provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision.

These Terms of Use (together with the Privacy Policy) constitute the entire agreement between you and us with respect to the subject matter contained herein.

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Notice and Procedure for Making Claims of Copyright Infringement

If you believe that your work has been copied in a way that constitutes copyright infringement, please provide our copyright agent the written information specified below. Please note that this procedure is exclusively for notifying us that your copyrighted material has been infringed.

- An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;
- A description of the copyrighted work that you claim has been infringed;
- A description of where the material that you claim is infringing is located on the Website;
- Your address, telephone number, and e-mail address;
- 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;
- A statement by you, under penalty of perjury, that the foregoing information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

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