

Terms & Conditions

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Website

This Website is owned and operated by OTOY Inc. (“**OTOY**”). By accessing and using this Website, you agree to these Website Terms and Conditions (“**Terms**”) without qualification. If you do not agree to be bound by these Terms, please do not use this Website and/or Services or continue to use this Website, the Materials and/or Services.

Some Services may also be subject to additional terms and conditions as indicated in those Services (“**Additional Terms**”). If there is any conflict between these Terms and the Additional Terms, then the Additional Terms take precedence.

Changes

OTOY may periodically revise the terms of these Terms by updating this page. You agree to be bound by subsequent revisions. Accordingly, you should periodically visit this page to review the current Terms.

Passwords

In order to access a Service you may either be issued a unique username and password or be requested to select your own username or password. Where you are requested to select your own password you must not select one which is unsuitable. Unsuitable passwords include number combinations that may be easily guessed and other numbers easily connected with you.

In all cases you must safeguard your password.

All your passwords are personal to you and you must:

- (a) at all times maintain the confidentiality of each password and not disclose any password to any third party;
- (b) only use a password for the purpose for which it was intended; and
- (c) ensure that no one can see you entering your password.

You must immediately notify OTOY of any actual or possible:

- (a) disclosure of your password to any other person as soon as you are aware or suspect that your password has been disclosed; and
- (b) unauthorized access to this Website or any Service as soon as you suspect or become aware of that unauthorized access.

You must immediately change your password:

- (a) as soon as you are aware or suspect that your password has been disclosed; or
- (b) you suspect or become aware of any unauthorized access to this Website or any Service.

You are solely responsible for any use of this Website or any Service by any person using your password. You indemnify OTOY against any and all claims arising out of your failure to:

- (a) maintain the confidentiality of your password;
- (b) take all reasonable steps to prevent disclosure to any person when entering your password;
- (c) unreasonably delaying notification to OTOY of the actual or possible disclosure of your password or unauthorized access to this Website; and
- (d) leaving a computer unattended when logged on to this Website.

Your password, and therefore further use of the Website, the Materials and/or Services, may be cancelled at any time you are in breach of these Terms.

Restrictions

You may not:

- copy, replicate, reproduce, distribute, transmit, publish, translate, adapt, modify, vary, decompile, disassemble or reverse engineer any part of this Website, the Materials or the System;
- make any part of this Website, the Materials or any Service available to any other person to whom the appropriate password has not been issued; or

- link to this Website in any way which misleads any person regarding any association with the Website or your association with OTOY whether implicitly or expressly.

You must not use or permit the use of this Website, the System or any Service:

(a) which is contrary to any applicable law;

(b) that contravenes the intellectual property, privacy or any other rights of any third party;

(c) which is in any way harmful, threatening, abusive, tortious, defamatory, libelous, vulgar, obscene, lewd, profane, invasive of another's privacy, hateful or racially, ethnically or otherwise objectionable;

(d) for any purpose other than as specifically intended; or

(e) in any way that interferes with the function or accessibility of the Website or that restricts the access of others thereto.

You must not introduce to this Website, or the System or any Service any virus, worm or any other code designed to interrupt, manipulate or damage the Website, the System or any Service in any way.

OTOY has carefully designed the Website with the purpose of delivering certain content to users in a particular format and with a particular appearance. No third party shall have the right to utilize the content of the Website in any way that interferes with that purpose. In particular, OTOY prohibits any party from displaying the content on the Website in any format where third party advertising or other materials that OTOY did not authorize in writing is viewed or viewable together with the proprietary content from the Website.

Privacy of Personal Information

Please see OTOY's privacy policy at <https://home.otoy.com/privacy-policy/> for information about how OTOY collects, uses and discloses information about users of the Services and/or Website.

When you use OTOY's Services and/or Website, OTOY collects information about you, like your name, postal address, e-mail address, age, industry, location, IP address, GPU's, browser information, and other information to and including that related to your use of OTOY's website, such as:

- (a) Details of the user (including name, address, telephone and facsimile numbers and e-mail addresses);
- (b) Details of the user's sales history (including product or service purchased price and date of purchase);
- (c) Details of the user's forum posts; and
- (d) Details of the user's access to the Website and use of the Services.

As a user of OTOY's products, Services, software and / or Website, you acknowledge and agree that OTOY may hold, use and / or disclose the information it collects to send you important information relating to OTOY's products, software and Services, including changes to our terms, conditions and policies, or for other administrative purposes, for business purposes, such as statistical and other data analysis, improving our products and services and identifying usage trends, providing our services to you, promotional and marketing purposes, internal research purposes, to protect OTOY's legal rights, and for any other use that you authorize.

OTOY may also use various technologies, including but not limited to Google Analytics, to collect and store information about your visits to OTOY's website, and your use of its products and Services. Google Analytics is operated externally to, and independently of, OTOY. You can view Google's privacy policy here

<http://www.google.co.nz/intl/en/policies/privacy/>

OTOY does not guarantee the security of your personal information. Please contact OTOY immediately if you believe your personal information is no longer secure.

Where OTOY holds personal information relating to you, and that personal information is readily retrievable, you are entitled to obtain confirmation of whether OTOY holds that personal information, and to have access to, and to request correction of, that information. Any enquiries relating to your personal information, and any requests to access, correct, update or remove your information, or any complaint about a breach of your privacy, should be sent to OTOY at OTOY, Inc., 1010 Wilshire Blvd. #1604, Los Angeles CA 90017

If you advise OTOY that you do not want it to collect any or all of your personal information, then, depending on the nature of the information you do not authorize OTOY to collect, OTOY may not be able to allow you user access to forums, enable software updates which would otherwise be available to the individual user, or provide other similar benefits or services. This may also otherwise affect OTOY's ability to provide you with its products and / or Services.

You acknowledge and agree that OTOY may provide all information collected to third parties for purposes including

- (a) administering, managing and monitoring the Website, products and Services;
- (b) conducting market research, data processing and statistical analysis and reporting;
- (c) verification and training purposes; and
- (d) product improvements.

As a user of the Services, you acknowledge and agree that OTOY may use any information it obtains relating to you, including, without limitation, your name, postal address, email address, age, industry and location, IP address, browser information, company size, relevant systems data, and other information related to your use of OTOY's Website and Services, such as the content you access, the time and date of your visit, and your use of Services. This information may be used by OTOY for administrative and business purposes including but not limited to statistical and other data analysis, and promotional and marketing purposes.

Rights to Material and Information

All rights (including intellectual property rights such as copyright) and interest in any Service accessible on this Website, the Website itself, the Materials and any proprietary information accessible via this Website are the exclusive property of OTOY and you agree that no such rights or interests will pass to you.

You agree not to copy or imitate all or any part of the design or layout of the Website.

You may not modify, publish, transmit, display, participate in the transfer or sale, create derivative works, or in any way exploit the content of the Website or any portion of it. Except as otherwise expressly permitted under copyright law or as otherwise specifically authorized on the Website with respect to specific elements of the Website, you may not copy, redistribute, publish, display or commercially exploit any material from the Website without the express permission of OTOY and, if the copyright owner is other than OTOY, the copyright owner. In the event of any permitted copying, redistribution or publication of material from the Website, no changes in or deletion of author attribution, trademark, legend, or copyright notice shall be made. You acknowledge that you do not acquire any ownership rights by downloading copyrighted material.

You hereby grant to OTOY and its affiliates, licensees, successors and assignees worldwide, royalty-free, perpetual, irrevocable, non-exclusive sub-licensable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and display any e-mail, video, graphic, data, or information sent by you to OTOY (in whole or in part) and/or to incorporate it in other works in any form,

media or technology now known or later developed. You agree that the rights of OTOY are irrevocable, and you hereby waive any right to seek or obtain rescission or termination of any of OTOY's rights or any form of equitable or injunctive relief.

Use of Materials

OTOY authorizes you to access and use the Website solely for your personal use. You may not sell or modify the Materials. Except as expressly permitted by the terms of any separate license agreement between you and OTOY that is applicable to specific Materials that you may download or access through the Website, you may not reproduce, display, publicly perform, distribute, or otherwise use the Materials in any way for any public or commercial purpose. If you violate any part of these Terms, your permission to use the Materials and the Website automatically terminates and you must immediately destroy and copies you have made of any of the Materials. You are solely responsible for complying with all import and export laws and regulations and all applicable laws of any jurisdiction from which you may access the Website.

No portion of the Website, the Materials and the Services is directed at children under the age of 13. You must be 13 years or older to use and access the Website, the Materials and the Services, or submit any information to OTOY, and if you are nevertheless under the age of majority in your jurisdiction, you are only permitted to use and access the Website, the Materials and the Services, and submit any information to OTOY, if your parent or guardian accepts these Terms on your behalf in advance. By using or accessing the Website, the Materials or the Services, or submitting information to OTOY, you represent and warrant that you meet these requirements.

Rules of Conduct for User Interaction and User Generated Content

You are solely responsible for any and all content posted by you on the Website. You also are solely responsible for, and assume any and all risks associated with, reviewing and/or using any content posted on the Website by other users. OTOY does not endorse, edit, verify, vouch for, or control any content posted on the Website by users, and does not guarantee the accuracy or appropriateness of any content posted by users. Users may be held legally liable for any content that they post to the Website, and may be held legally accountable if the content they post includes material that infringes any patent, trademark, trade secret, copyright or any other intellectual property or the proprietary right(s) of any person or entity. OTOY reserves the right to monitor any of its user interactions or user generated content at any time to ensure that these rules are being observed.

By using the Website, and in particular by using portions of the Website which includes user generated content, you may be exposed to content which is offensive or otherwise

objectionable to you. If you believe that any such content violates this Agreement, OTOY encourages you to contact OTOY. OTOY reserves the right to modify or remove anything submitted, posted, or uploaded to OTOY, at any time for any reason without prior notice. Postings which violate this Agreement may be deleted upon discovery and OTOY reserves the right to terminate or restrict access to the Website of the responsible user(s). However, under no circumstances will OTOY be liable for any errors, omissions, or offensive material contained in any content posted by users, or for any loss, liability, claim, damage, or expense arising from or in connection with your use of any content posted by any users. For any content that you post or upload to the Website, you represent and warrant that (i) you are the owner of all rights in such content or have obtained the written permission of the owner to upload the content and to grant all rights provided for in this agreement, (ii) you have obtained all necessary permissions with respect to all persons, places and things that appear in the content to grant all rights provided for in this agreement, (iii) no part of the content is subject to any claim, lien or encumbrance, and (iv) no use of the content or any part thereof as contemplated herein will violate or infringe any right of any third party. You agree not to collect or store personal data about other users or members, or to submit any posting, e-mail, statement and/or other content that contains or provides links to:

1. Any material that is unlawful, threatening, abusive, harassing, tortious, defamatory, invasive of privacy or publicity rights, hateful, vulgar, obscene, profane, harmful, libelous, indecent, racially, ethnically, or otherwise objectionable (including, but not limited to, posting the private information of other parties);
2. Any material that impersonates any person or entity, or falsely states or otherwise misrepresents your affiliation with a person or entity;
3. Any false "header" (the legend attached to e-mail messages to show the message's point of origin, route, and destination), falsely configured e-mail or otherwise manipulate identifiers in order to disguise the origin of any Content uploaded, posted, e-mailed or otherwise transmitted through OTOY. Headers of e-mail messages may not be removed or altered to conceal e-mail addresses;
4. Any Content that you do not have a right to transmit under any law or any contractual or fiduciary relationship (such as inside information, trade secrets, and other proprietary information and/or confidential information);
5. Any material that violates or infringes in any way upon the rights of others, including, without limitation, any patent, trade secret, right of privacy, right of publicity, copyright or trademark rights; this includes, without limitation,

“warez” (copyrighted software that is distributed illegally), “MP3” files of copyrighted music, copyrighted photographs, text, video, or artwork;

6. Any material containing any unsolicited or unauthorized advertising or commercial solicitation of any kind whatsoever, including, without limitation, distribution of unsolicited e-mail using an OTOY address or containing any references to OTOY (“spam”), “junk mail,” “chain letters,” “pyramid schemes,” or any use of distribution lists to any person or entity who has not given specific permission to be included on such a list.
7. Any material that contains software viruses or any other computer code, programs, files, corrupted data, or any other harmful or damaging component designed to interrupt, impair, destroy, or limit the functionality or operability of any computer system, software, hardware, or telecommunications equipment;
8. Any material that constitutes “stalking” or any other form of harassment of any member or user of the Website or Materials or any other person;
9. Any material containing nudity, pornography, or sexual material of a lewd, vulgar, lascivious, indecent, lecherous, obscene or otherwise sexually explicit nature or intent, or that violates local, state, national, and/or international laws;
10. Content that promotes, encourages, or provides instructional information about any illegal activities or any material which encourages conduct that would violate any law or give rise to civil or criminal liability under any law. (Including, but not limited to, “hacking,” “cracking,” or “phreaking”);
11. Any raffle, contest, or sweepstakes or any game involving wagering or otherwise requiring payment of a fee or other consideration by participants;
12. Any hate propaganda or hate mongering, swearing, or fraudulent material or activity;
13. Any content that advertises or promotes any product. service or cause;
14. Any content that solicits funds, advertisers or sponsors;

15. Any content that disrupts the normal functioning of the Website or any part of the Website ; or

16. Any content or activity that OTOY, in its sole discretion, deems inappropriate.

Submission/Feedback

OTOY does not accept or consider ideas, suggestions, creative materials or business propositions other than those it has specifically requested. This policy is designed to avoid misunderstandings if projects developed by OTOY or its related parties seem to others to be similar to their own work. If you nevertheless provide any unsolicited ideas, suggestions, creative materials or business propositions to OTOY or if you provide any feedback or suggestions for improving OTOY's products or services, you hereby grant to OTOY an irrevocable, non-exclusive worldwide perpetual license in the same and OTOY will be free to use the same without compensating you in any way.

Exclusions, Limitations on Access and Termination

The stability and availability of this Website is dependent on the stability and availability of the System, OTOY's internet service provider, infrastructure hosting provider and the nature of the internet. Accordingly, access to this Website, the Materials and the Services is not guaranteed, represented or warranted whatsoever to be error free, delay free or uninterrupted and OTOY will not be liable for any such errors, delays or interruptions. You agree that OTOY may remove all or any part of the Materials and/or the Services for indefinite periods of time or cancel all or any part of the Services at any time, without notice to you or any other person. OTOY will not be liable to you or any other person if it does so.

The security of information transmitted over the internet cannot be guaranteed and OTOY expressly disclaims (to the maximum extent permitted by law) all liability for any breach of security while information is transmitted over the internet. In addition, OTOY does not guarantee, represent or warrant whatsoever that this Website, the Materials, the System and/or any Service will be free from loss, corruption, attack, viruses (or any kind of malicious code whatsoever), interference, hacking or any other security intrusion.

OTOY in its sole discretion may for security or technical reasons prohibit or restrict your access to this Website, the Materials and/or any Service at any time and without notice to you or any other person.

OTOY may temporarily suspend your access to this Website, the Materials and/or any Service to carry out maintenance, repairs, reconfigurations or upgrades.

OTOY may update or change the content, nature and functionality of this Website, the Materials, the System and/or any Service or discontinue any Service from time to time without notice to you or any other person.

OTOY may in its sole discretion terminate your access to this Website, the Materials and/or any Service at any time without notice to you or any other person.

Information True and Correct

You warrant that all information and details provided by you via this Website are true, correct, complete and accurate in all respects.

No Representations, Warranties or Guarantees

This Website, the Materials and the Services are provided on an “as is” and “as available” basis. To the maximum extent permitted by law, all representations, warranties (including as to merchantability and suitability for any purpose), undertakings and guarantees, whether express or implied, are excluded and OTOY does not give any representation, warranty, covenant, undertaking or guarantee whatsoever including, without limitation in respect of the availability, accuracy, completeness, currency or reliability of the information provided via this Website, the Materials and/or any Service.

Disclaimers

If you are dissatisfied with any of the materials or services contained in or accessed through the Website, or with any of these Terms, your sole and exclusive remedy is to discontinue accessing and using the Website and Materials. OTOY’s rights shall survive any such cessation of use.

WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, OTOY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO YOU, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OR OTHERWISE WHICH WOULD EXTEND BEYOND THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT.

You assume all risks that the Website, Materials and related products, services and information are suitable or accurate for your needs and will be uninterrupted, timely, secure or error free. Any applications uploaded or downloaded or otherwise obtained through the Website are at your own discretion and risk and you are solely responsible for any damage to your computer or loss of data. You agree that OTOY shall not be responsible for any loss or damage of any sort relating to your dealings with any third party advertiser or content provider on the Website.

Links

The Website contains links to third party sites that are not under the control of OTOY and OTOY is not responsible for any content on any linked site. If you access a third party site from the Website, then you do so at your own risk. OTOY provides links only as a convenience and the inclusion of the link does not imply that OTOY endorses or accepts any responsibility for the content on those third party sites.

Copyright Complaints

If you believe that your work has been copied and is accessible on the Website in such a manner as to constitute copyright infringement, you may notify OTOY by providing OTOY's copyright agent with the following information:

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, including the URL (i.e., web page address) of the location where the copyrighted work exists or a copy of the copyrighted work;

Your address, telephone number, and email 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, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owners behalf.

OTOY's agent for notice of claims of copyright infringement on OTOY may be reached as follows

By email at legalteam@otoy.com

Other Legal Complaints

If you believe that any content on the Website violates any of your legal rights other than copyright, you may notify OTOY by providing OTOY with the following information:

An electronic or physical signature of the person authorized to act on behalf of the individual whose rights may have been violated.

A description of the material that you believe violates your legal rights and the way in which you believe that your legal rights are violated.

Your address, telephone number and email address

A statement by you under penalty of perjury that the above information in your notice is accurate and that you are the person whose rights may have been violated or you are authorized to act on behalf of such person

Your notice may be sent to the email address for copyright complaints provided above.

Liability

OTOY AND ITS AFFILIATED ENTITIES AND THE EMPLOYEES, CONTRACTORS, ACCOUNTANTS, ATTORNEYS, AGENTS, HEIRS, SUCCESSORS, LICENSEES AND ASSIGNS OF EACH OF THEM (THE "OTOY PARTIES") SHALL NOT BE LIABLE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES ARISING OUT OF OR CONNECTED WITH (I) YOUR USE OF THE WEBSITE AND MATERIALS AND (II) ANY OTHER SUBJECT MATTER OF THIS AGREEMENT. THE MAXIMUM LIABILITY OF THE OTOY PARTIES TO YOU FOR ANY CLAIM UNDER ANY LEGAL THEORY RELATED IN ANY WAY TO THIS AGREEMENT OR THE WEBSITE OR MATERIALS WILL BE US\$100.

Indemnity

To the fullest extent permitted by law you indemnify and hold the Otoy Parties harmless against:

(a) all costs, losses, claims or liabilities arising from any breach of these Terms by you or any action taken by OTOY as part of an investigation of a suspected breach of these Terms or as a result of OTOY finding or deciding that a breach of these terms has occurred;

(b) all costs, losses, claims or liabilities arising from any third party claims made against OTOY (or any of their respective directors and employees) as a result of any breach of these Terms by you; and

(c) all costs, losses, claims or liabilities of OTOY (and each of its directors and employees) arising from any use of your password not expressly permitted in these Terms.

Severability

If any provision of these Terms shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severed from these Terms and shall not affect the validity and enforceability of the remaining provisions.

Governing Law and Jurisdiction

These Terms are governed by the laws of California and you submit to the exclusive jurisdiction of the Los Angeles, California courts in respect of all matters relating to these Terms and your use of this Website, the Materials and/or any Service.

Entire Agreement.

This agreement and any other specific written terms that OTOY requires you to accept as a condition of access to any feature of the Website or Materials are the entire agreement between the parties and may only be modified as expressly provided in this agreement and in such other written terms.

Printed Terms

A printed version of these terms and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Defined Terms

In these Terms, unless the context otherwise requires:

“Materials” means any materials provided to you by OTOY or available to you by via this Website.

“Services” means the services accessed or provided via this Website.

“System” means OTOY’s system used to drive, support and administer the Website and provide the Services.

“Website” means this website.

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