

## TriMark Website Terms of Use

Last Updated: February 27, 2023

### **1. ACCEPTANCE OF THE TERMS OF USE.**

**PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE YOU USE THE WEBSITE.** These Terms of Use are entered into by and between you (acting in your capacity as an employee or other representative of your company or other entity, if applicable), and TriMark USA, LLC and/or its affiliates and subsidiaries (collectively, "TriMark", "we", "our", or "us"). The following terms and conditions, together with any documents located at <http://www.trimarkusa.com> or that are expressly incorporated by reference (collectively, these "Terms of Use"), govern your access to and use of <http://www.trimarkusa.com> and all subdomains and the websites owned or operated by the affiliates of TriMark USA, LLC (as applicable, the "Website"), including all pages within or linked to by this Website, any content, goods, functionality, and services offered on or through the Website.

**By accessing or using the Website or by clicking to ACCEPT or AGREE to the Terms of Use when that option is made available to you, you acknowledge notice of, accept and agree to be bound by these Terms of Use. If you do not want to agree to these Terms of Use, you must not access or use the Website.**

**THIS PARAGRAPH CONTAINS AN IMPORTANT NOTICE. PLEASE READ IT CAREFULLY.** The **ARBITRATION AND GOVERNING LAW, and LIMITATION ON TIME TO FILE CLAIMS** sections in these Terms of Use contain a **binding arbitration provision that requires arbitration on an individual basis (rather than jury trials or class actions) and limits the time period within which you may bring a claim against us.** Our Privacy Policy, located at <https://www.trimarkusa.com/SiteMedia/SiteResources/Terms/TriMark-USA-Site-Privacy-Policy.pdf> (the "Privacy Policy"), describes the details of the information practices and procedures for the collection, use and sharing of data (including personal information) in relation to your use of the Website. We strongly urge you to read our Privacy Policy.

### **2. CHANGES TO THESE TERMS OF USE.**

We reserve the right to change these Terms of Use at any time upon notice. We may give notice by posting the updated Terms of Use on the Website or by any other reasonable means. You can review the most current version of these Terms of Use at any time at <https://www.trimarkusa.com/SiteMedia/SiteResources/Terms/TriMark-Website-Terms-of-Use.pdf>. The Terms of Use in effect at the time of your use of the Website apply. Updated Terms of Use are binding on you with respect to your use of the Website on or after the date indicated in the updated Terms of Use. If you do not agree to the updated Terms of Use, you must stop using the Website. Your continued use of the Website after the date of the updated Terms of Use will constitute your acceptance of the updated Terms of Use.

### **3. CHANGES AND ACCESS TO THE WEBSITE.**

We reserve the right to withdraw or amend this Website, and any service or material we provide on the Website, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Website is unavailable at any time or for any period. From time to time, we may restrict access to all or some parts of the Website, or the entire Website, to users, including registered users. To access the Website or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Website that all the information you provide on or in connection with the Website is correct, current, and complete. You consent to all actions we take with respect to all information you provide to or enter on this Website, as described in greater detail in our Privacy Policy, including but not limited to through the use of any interactive features on the Website ("User Submissions"). If you choose, or are provided with, a username, 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 must ensure that all such employees that are authorized by you to access and use the Website are aware of and comply with these Terms of Use. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this 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. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information. You are responsible for all activities that occur under your account. You accept all risks of unauthorized access of your account. We may 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 of Use.

### **4. USE OF INFORMATION PROVIDED BY YOU.**

TriMark can use User Submissions to contact you about our or our suppliers' products or services. You acknowledge, represent and agree that any User Submission is submitted voluntarily and is not confidential or proprietary, and that your User Submission does not establish a relationship between you and us. You grant TriMark and its sublicensees a worldwide, royalty-free, non-exclusive, transferable, perpetual and irrevocable license to use, distribute, transmit, reproduce, modify, publish, translate, publicly perform, display and create derivative works of your User Submissions, except as otherwise prohibited by applicable law or these Terms of Use. You waive any right to compensation of any type for your User Submissions. You represent and warrant that you have the authority necessary to grant the rights (including any intellectual property rights) in this

Section and that use of User Submissions by us does not infringe the rights of any third party or violate any law.

#### **5. ONLINE PURCHASES AND OTHER TERMS AND CONDITIONS.**

All purchases through our Website or other transactions for the sale of goods or services formed through the Website, or resulting from visits made by you, are governed by our Terms of Sale <https://www.trimarkusa.com/SiteMedia/SiteResources/Terms/TriMark-Terms-and-Conditions-of-Sale.pdf>, which are hereby incorporated into these Terms of Use.

#### **6. INTELLECTUAL PROPERTY RIGHTS.**

The Website and its entire contents, features, and functionality (including but not limited to all information, software, text, displays, images, video, and audio, and the design, selection, and arrangement thereof), are owned by TriMark, its licensors, or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. You must not alter, reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, republish, download, store, or transmit the Website or any of the material on our Website without our prior written consent. The TriMark name, logo, and all related names, logos, product and service names, designs, and slogans are trademarks of TriMark or its affiliates or licensors. You must not use such marks without the prior written permission of TriMark. Any other names, logos, product and service names, designs, and slogans on this Website are the trademarks of their respective owners. Under no circumstances will you acquire any ownership rights or other interest in any such marks or content on this Website by or through your use of the Website.

#### **7. PERMITTED USES; RESTRICTIONS.**

You represent and warrant that: (i) you are at least 18 years of age; (ii) you have full power and authority to agree to these Terms of Use; and (iii) you will not access the Website if you have previously been prohibited from doing so or if any laws prohibit you from doing so. You may use the Website only for lawful purposes and in accordance with these Terms of Use.

#### **8. PROHIBITED USES.**

You agree not to:

- upload to, distribute, or otherwise publish through the Website any content that is libelous, defamatory, obscene, threatening, abusive, illegal, or otherwise objectionable, or that may constitute or encourage a criminal offense or that may otherwise give rise to liability.
- use the Website in any way that violates any applicable federal, state, local, or international law or regulation;
- violate the rights of anyone else, including but not limited to privacy rights and intellectual property rights
- use the Website for any unauthorized, fraudulent, or malicious purpose;
- introduce any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful, or use the Website to engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Website, or which, as determined by us, may harm TriMark or users of the Website or expose them to liability;
- use the Website in any manner that could disable, overburden, damage, or impair the site;
- use any robot, spider, or other automatic device, process, or means to access the Website for any purpose, including monitoring or copying any of the material on the Website;
- access or attempt to access systems, data, materials or information not intentionally made accessible by TriMark, including TriMark's data or the data of other users;
- enable third parties to violate the Terms of Use; and
- use the Website for any use other than the purpose for which it was intended.

#### **9. RELIANCE ON INFORMATION POSTED.**

The information and content presented on or through the Website is made available solely for general information purposes. We do not warrant the accuracy, completeness, or usefulness of this information or content. Any reliance you place on such information or content is strictly at your own risk. We disclaim all liability and responsibility arising from any reliance placed on such information or content by you or any other visitor to the Website, or by anyone who may be informed of any of its information or contents. The information and content on this Website is updated frequently, including based on interaction with users of the Website, but the Website's information and content is not necessarily complete or up-to-date. Any of the information or content on the Website may be out of date at any given time, and we are under no obligation to update such information or content.

#### **10. LINKS FROM THE WEBSITE.**

If the Website contains links to other sites and resources provided by third parties, these links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use for such websites.

### **11. GEOGRAPHIC RESTRICTIONS.**

TriMark is based in the United States and we provide this Website for use only by persons located in the United States. We do not intend for the Website to be used by persons or entities in other countries or jurisdictions. If you are in such a country or jurisdiction, you are not authorized to and agree that you will not use the Website. We make no claims that the Website or any of its content is accessible or appropriate outside of the United States. Access to the Website may not be legal by certain persons or in certain countries. If you access the Website from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

### **12. DISCLAIMER OF WARRANTIES.**

YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY GOODS, SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE AT YOUR OWN RISK. THE WEBSITE, ITS CONTENT, AND ANY GOODS, SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER TRIMARK NOR ANY PERSON ASSOCIATED WITH TRIMARK MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER TRIMARK NOR ANYONE ASSOCIATED WITH TRIMARK REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY GOODS, SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR ANY GOODS, SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS. TO THE FULLEST EXTENT PROVIDED BY LAW, TRIMARK HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE. WARRANTIES RELATED TO YOUR PURCHASE OF GOODS OR SERVICES FROM US, IF ANY, WILL BE GOVERNED BY THE TERMS OF SALE.

### **13. LIMITATION OF LIABILITY.**

TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL TRIMARK, ITS AFFILIATES, SUBSIDIARIES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE. YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE WEBSITE IS PREDICATED UPON YOUR WAIVER OF ANY RIGHT TO SUE TRIMARK DIRECTLY OR TO PARTICIPATE IN A CLASS ACTION SUIT FOR ANY LOSSES OR DAMAGES RESULTING FROM YOUR USE OF THE WEBSITE. IN NO EVENT SHALL TRIMARK, ITS AFFILIATES, LICENSORS, AND SERVICE PROVIDERS, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, LICENSORS, SUPPLIERS, SUCCESSORS, AND ASSIGNS TOTAL LIABILITY TO YOU FOR ALL DAMAGES EXCEED THE AMOUNT OF ONE HUNDRED DOLLARS (\$100.00).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGE, LOSS, OR LIABILITY FROM INTENTIONAL ACTS (INCLUDING FRAUD, FRAUDULENT MISREPRESENTATION, AND FAILURE TO DISCLOSE DEFECTS), PRODUCT LIABILITY, OR FOR DEATH OR PERSONAL INJURY. NOTHING IN THIS SECTION WILL BE INTERPRETED AS EXCLUDING LIABILITY THAT CANNOT UNDER APPLICABLE LAW BE EXCLUDED IN THOSE JURISDICTIONS. IF YOU LIVE OR ARE OTHERWISE SUBJECT TO THE LAWS IN ONE OF THOSE JURISDICTIONS, ANY STATUTORY ENTITLEMENT AVAILABLE TO YOU WILL BE DEEMED LIMITED TO THE EXTENT (IF AT ALL) PERMISSIBLE UNDER THAT LAW, AND, IF LIMITATION IS NOT PERMITTED, THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION MAY NOT APPLY TO YOU.

### **14. INDEMNIFICATION.**

You agree to defend, indemnify, and hold harmless TriMark, its affiliates, licensors, and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors, and assigns from and against any third-party claims, liabilities, damages, judgments, awards, losses, costs, expenses, settlements or fees (including reasonable attorneys' fees) arising out of or relating to (i) your violation of these Terms of Use or your use of the Website, (ii) any User Submission made by you, (iii) your violation of any other party's rights, or (iv) your violation of applicable law (v) any activity occurring under your user name.

### **15. ARBITRATION AND GOVERNING LAW.**

YOU WILL SUBMIT ANY DISPUTES ARISING FROM THESE TERMS OF USE OR THE WEBSITE, INCLUDING

DISPUTES ARISING FROM OR CONCERNING THEIR INTERPRETATION, VIOLATION, INVALIDITY, NON-PERFORMANCE, OR TERMINATION, TO FINAL AND BINDING ARBITRATION IN BOSTON, MASSACHUSETTS, UNDER THE RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION APPLYING DELAWARE LAW. YOU AGREE TO ARBITRATE IN YOUR INDIVIDUAL CAPACITY ONLY – NOT AS A REPRESENTATIVE OR MEMBER OF A CLASS – AND YOU EXPRESSLY WAIVE ANY RIGHT TO FILE A CLASS ACTION OR SEEK RELIEF ON A CLASS ACTION BASIS. FURTHERMORE, UNLESS YOU AND COMPANY AGREE IN WRITING, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OF CLASS PROCEEDING. ALL ARBITRATION PROCEEDINGS ARE CONFIDENTIAL, UNLESS BOTH YOU AND COMPANY AGREE OTHERWISE. ARBITRATION ORDERS AND AWARDS REQUIRED TO BE FILED WITH APPLICABLE COURTS OF COMPETENT JURISDICTION ARE NOT CONFIDENTIAL AND MAY BE DISCLOSED BY THE PARTIES TO SUCH COURTS. A PARTY WHO IMPROPERLY DISCLOSES CONFIDENTIAL INFORMATION WILL BE SUBJECT TO SANCTIONS. THE ARBITRATOR AND FORUM MAY DISCLOSE CASE FILINGS, CASE DISPOSITIONS, AND OTHER CASE INFORMATION AS REQUIRED BY A COURT ORDER OF PROPER JURISDICTION.

These Terms of Use will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its conflict of laws provisions.

**16. LIMITATION ON TIME TO FILE CLAIMS.**

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION OCCURS. OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

**17. ELECTRONIC NOTICE AND SIGNATURE.**

You agree and consent to receive electronically all communications, agreements, documents, receipts, notices and disclosures (collectively, “Communications”). We may provide these Communications to you by posting them via the Website, by electronic notification or by emailing them to you at the email address you provide. You should maintain copies of all Communications. If you have any questions about these Terms of Use or any Communication, you may contact us through email at [info@trimarkusa.com](mailto:info@trimarkusa.com), or by mail at: TriMark USA, LLC, 9 Hampshire Street, Mansfield, MA 02048, United States, Attention: Legal Department. You further consent and agree that your use of a keypad, mouse or other device to select an item, button, icon or similar act while using the Website, or in accessing or making any transactions regarding any agreement, acknowledgment, consent, terms, disclosures or conditions, constitutes your signature, acceptance, and agreement as if actually signed by you in writing. Further, you agree that no certification authority or other third party verification is necessary to establish the validity of your electronic signature, and that the lack of such certification or third party verification will not affect the enforceability of your signature or any resulting contract between you and us.

**18. GENERAL.**

If any provision of these Terms of Use is held by a court of competent jurisdiction or arbitrator to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect. You and TriMark intend that the provisions of these Terms of Use be enforced to the fullest extent permitted by applicable law. Accordingly, you and TriMark agree that if any provision is deemed unenforceable, where possible, it will be modified to the extent necessary to make it enforceable, which may include its deletion. TriMark may assign these Terms of Use, in whole or in part, at any time with or without notice to you. You may not assign these Terms of Use or assign, transfer, or sublicense your rights, if any, to access or use the Website or its content, and any attempt by you to do so is void. TriMark’s failure to act with respect to a breach by you or others does not waive its right to act with respect to subsequent or similar breaches. A waiver will only be binding on TriMark if it is in a written document signed by TriMark. These Terms of Use (including any incorporated terms) constitute the entire agreement between you and TriMark with respect to the Website and its contents. Both you and TriMark warrant to each other that, in entering into these Terms of Use, neither TriMark or you have relied on or will have any right or remedy based upon any statement, representation, warranty, or assurance other than those expressly stated in these Terms of Use. The preceding sentence will not limit or exclude any liability that cannot be limited or excluded under applicable law. No one other than you and TriMark, or TriMark’s successors and assigns, will have any right to enforce any of these Terms of Use. Neither these Terms of Use nor the Website create a partnership, joint venture, employment, or other agency relationship between us. You may not enter into any contract on our behalf or bind us in any way.

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