

# UTERQUE TERMS & CONDITIONS

## 1. INTRODUCTION

Welcome to the UTERQUE.COM website and co-branded versions of the website located at URLs that resolve to the domain name UTERQUE.COM (the "Website" or "Site").

As you have no doubt experienced with virtually all websites, your use of this Site, as well as the use of any UTERQUE-branded mobile application on your smartphone or handheld device ("Mobile App"), is subject to certain terms and conditions of use (collectively "Terms") set forth below. These Terms are important for both you and us as they create a legally binding agreement between us, protecting your rights as a valued customer and our rights as a business.

PLEASE READ THESE TERMS CAREFULLY BEFORE USING AND/OR PLACING AN ORDER FROM THIS WEBSITE OR THE MOBILE APP. THEY MAY SEEM TECHNICAL AND LEGALISTIC, BUT THEY ARE IMPORTANT. BY USING THIS SITE, OUR MOBILE APP, AND/OR PLACING AN ORDER FROM THIS SITE OR THE MOBILE APP, YOU ACCEPT THESE TERMS AND OUR PRIVACY POLICY WITHOUT ANY RESERVATIONS OR QUALIFICATIONS, AND YOU AGREE TO BE BOUND BY THESE TERMS AND OUR PRIVACY POLICY. THIS INCLUDES, WITHOUT LIMITATION, ACCEPTING THE TERMS RELATING TO BINDING ARBITRATION, WAIVER OF THE RIGHT TO CLASS ACTION, DISCLAIMER OF WARRANTIES, DAMAGE AND REMEDY EXCLUSIONS AND LIMITATIONS, AND NEW YORK CHOICE OF LAW AS SET FORTH HEREIN. IF YOU DO NOT AGREE TO THESE TERMS OR OUR PRIVACY POLICY, WHETHER IN WHOLE OR IN PART, PLEASE DO NOT USE THE SITE OR OUR MOBILE APP, OR ANY OF THE SERVICES PROVIDED ON THE SITE OR THE MOBILE APP, OR PLACE AN ORDER FROM THE SITE OR THE MOBILE APP.

These Terms constitute an agreement between you (hereinafter, "you" or "your") on the one hand, and ITX USA LLC, a Delaware limited liability company with its principal address at 500 5th Avenue, Suite 400, New York, NY 10110 (hereinafter collectively, "us," "our," "we," " UTERQUE," or the "Vendor") on the other hand, in relation to your use of the Website or Mobile App, the goods/services offered and sold through this Website or the Mobile App, and any orders you place through the Website or Mobile App (collectively, the " UTERQUE Services"). Before you place an order, please carefully read these Terms and our Privacy Policy.

If you have any questions about the Terms, or the Privacy Policy, you may contact us via the contact information provided on our "Contact Us" webpage on the Site.

## 2. DISPUTES

You agree that any controversy or claim arising out of or relating to the Terms, the Site, the Mobile App, the Privacy Policy, and/or the UTERQUE Services shall be settled by binding arbitration in a location determined by the arbitrator as set forth herein (provided that such location is reasonably convenient for you in your

hometown area), or at such other location as may be mutually agreed upon by the parties, in accordance with the applicable procedural rules set forth in the then prevailing Comprehensive Arbitration Rules and Procedures of JAMS (“JAMS Rules and Procedures”), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The JAMS Rules and Procedures are available at [www.jamsadr.com](http://www.jamsadr.com) or by calling (800) 352-5267. The arbitrator shall be selected pursuant to the JAMS Rules and Procedures. Alternatively, you may assert your claims in small claims court in accordance with the terms of these Terms if your claims qualify and so long as the matter remains in such court and advances only on an individual (non-class, non-representative) basis. The arbitrator shall apply New York law consistent with the Federal Arbitration Act and applicable statutes of limitations, and shall honor claims of privilege recognized at law. If you initiate arbitration against UTERQUE, you will not be responsible for professional fees for the arbitrator’s services or any other JAMS fees. If UTERQUE initiates arbitration against you, UTERQUE will pay for the arbitrator’s services and any other JAMS fees associated with the arbitration. In the event that the claimant is able to demonstrate that the costs of arbitration will be cost-prohibitive or greater than the costs of litigation, UTERQUE will pay as much of the claimant’s filing and hearing fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive or more expensive than the cost of litigation. If any part of this arbitration provision is deemed to be invalid, unenforceable or illegal (other than the condition that claims will not be arbitrated on a class or representative basis), or otherwise conflicts with the rules and procedures established by JAMS, then the balance of this arbitration provision shall remain in effect and shall be construed in accordance with its terms as if the invalid, unenforceable, illegal or conflicting provision were not contained herein. If, however, the portion that is deemed invalid, unenforceable or illegal is that claims will not be arbitrated on a class or representative basis, then the entirety of this arbitration provision shall be null and void, and neither claimant nor UTERQUE shall be entitled to arbitrate their dispute. THE ARBITRATION OF DISPUTES PURSUANT TO THIS PARAGRAPH SHALL BE IN YOUR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED.

BY AGREEING TO THE ARBITRATION OF DISPUTES AS SET FORTH HEREIN, YOU AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL AND LIMITING YOUR RIGHT TO APPEAL AND YOU UNDERSTAND THAT YOU ARE WAIVING YOUR RIGHTS TO OTHER AVAILABLE RESOLUTION PROCESSES, SUCH AS A COURT ACTION. DO NOT USE THE SITE OR MOBILE APP, ANY OF THE SERVICES PROVIDED ON THE SITE OR MOBILE APP, OR PLACE AN ORDER FROM THE SITE OR MOBILE APP IF YOU DO NOT AGREE TO THE FOREGOING BINDING ARBITRATION PROVISIONS.

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. YOU FURTHER AGREE THAT ANY DISPUTES, CLAIMS, AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH THE SITE, THE MOBILE APP, THE

PRIVACY POLICY, AND/OR THESE TERMS WILL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION.

Any disputes arising out of or relating to these Terms, the Privacy Policy, the Site, the Mobile App, and/or the UTERQUE Services shall be resolved in accordance with the laws of state of New York, without regard to its conflict of law rules. Any disputes, actions or proceedings relating to these Terms or your access to or use of the Site or the Mobile App not subject to the arbitration provisions set forth herein must be brought in the Federal or state courts located in the state of New York and you irrevocably consent to the exclusive jurisdiction and venue of such courts.

### **3. 3. USE OF OUR WEBSITE AND/OR MOBILE APP**

You agree that:

- 1. You may only use the Website and/or Mobile App to make legitimate inquiries or orders.
- 2. You will not make any speculative, false or fraudulent orders. If we are reasonably of the opinion that such an order has been made, we shall be entitled to cancel the order and inform the relevant authorities.
- 3. You also agree to provide correct and accurate email, postal and/or other contact details to us and acknowledge that we may use these details to contact you in the event that this should prove necessary (see our Privacy Policy for more information on how we use your personal information).
- 4. If you do not give us all of the information that we need, we may not be able to complete your order.
- 5. You will not attempt to interfere or interfere in any way with the Site's network, the Mobile App's network, or our networks, or related network security, or attempt to use the Site's or Mobile App's service to gain unauthorized access to any other computer system.
- 6. You will not use the Site or Mobile App to communicate, transmit, or post material that infringes on the intellectual property, privacy or publicity right of another person or entity.
- 7. You will not use the Site or Mobile App to engage in conduct that would constitute a civil or criminal offense, or that otherwise violates any city, state, national or international law or regulation.
- 8. By placing an order through the Website or Mobile App, you represent and warrant that you are at least 18 years old and are legally capable of entering into binding contracts

### **4. SERVICE AVAILABILITY**

Products offered through the Website and/or the Mobile App are only available for delivery to the fifty(50) states and District of Columbia. At this time we are unable to deliver to APO addresses, Puerto Rico and US territories, as well as freight companies.

### **5. HOW PURCHASE CONTRACTS ARE FORMED**

No contract ("Contract") in respect of the purchase of a product offered on the Site or Mobile App shall exist between you and us until your order has been accepted by us and we send you the Shipment Confirmation (defined below). If we do not accept your order and funds have already been deducted from your account, the funds will be fully refunded.

To place an order, you will be required to follow the shopping process online and press the "Finalize Order" button to submit the order. After this, you will receive an email from us acknowledging that we have received your order (the "Order Confirmation"). Your order constitutes your offer to us to buy one or more products from us. All orders are subject to acceptance by us, and we will confirm such acceptance to you by sending you an email that confirms that the product has been dispatched (the "Shipment Confirmation"). We will not be bound to supply any other products which may have been part of your order until the dispatch of such products has been confirmed in a separate Shipment Confirmation. Notwithstanding the foregoing, your card or other method of payment will not be charged until your order is accepted and shipped. However, it may show a pre-authorization of the funds immediately upon order.

## **6. AVAILABILITY OF PRODUCTS**

All orders for products are subject to availability and in this regard, in the event of supply difficulties or because products are no longer in stock, we reserve the right to give you information about substitute products of an equal or higher quality and value which you can order. If you do not wish to order such substitute products, we will refund any monies that you might have paid.

## **7. REFUSAL OF ORDER**

We reserve the right to withdraw any product from the Website or Mobile App at any time and/or remove or edit any materials or content on the Website or Mobile App. While we will make reasonable efforts to process all orders, there may be exceptional circumstances that may require us to refuse to process an order after we have sent you an Order Confirmation; and we reserve the right to refuse to process an order at any time, at our sole discretion.

We will not be liable to you or any other third party by reason of our withdrawing any product from the Website or Mobile App, whether it has been sold or not, removing or editing any materials or contents on the Website or Mobile App or for refusing to process or accept an order after we have sent you the Order Confirmation.

## **8. REFUNDS AND RETURNS**

Except as set forth below, we agree to refund any product you are not completely happy with when you return it to us within thirty (30) days of the date of the Shipment Confirmation, unless a longer period of time is specified in writing at the time of purchase, Order Confirmation or Shipment Confirmation, in accordance with the terms set forth herein. You shall receive a refund of the price paid for the products (except shipping costs) in accordance with our Returns and Exchange Policy (see below Clause 13). Refunds will be credited to your original method of payment (if

the original method of payment is not available, we will issue you merchandise credit).

Your right to a refund only applies to product(s) that are returned in new, unworn, unwashed, and unaltered merchandise with all internal garment tags intact. Any product that does not meet these conditions will not be eligible for a refund. Therefore, we ask that you take reasonable care of the product(s) while they are in your possession and, when possible, retain the original boxes for any return of the product(s).

Undergarments & swimwear are returnable or exchangeable, as long as they remain in the original packaging and the hygiene sticker remains attached. Accessories and perfumes must be in their original condition and original packaging.

Monogrammed or customized products are not returnable or exchangeable.

## **9. DELIVERY**

Subject to the provisions of Clause 6 above, and unless there are any exceptional circumstances, we will endeavor to fulfill your order for product(s) listed in the Shipment Confirmation by the delivery date set out in the Shipment Confirmation or, if no estimated delivery date is specified, within 15 business days of the date of the Shipment Confirmation. Delivery to Alaska and Hawaii may take up to 20 business days of the Shipment Confirmation.

Reasons for delay could include:

- 1. Customization of products;
- 2. Specialized products;
- 3. Unforeseen circumstances; or
- 4. Delivery area.

For signature required deliveries (which is generally determined by the carrier), we will after the initial delivery, make two (2) additional attempts to deliver your parcel before initiating a return. For the purpose of these Terms, the "delivery" shall be deemed to have occurred or the goods shall be deemed to "have been delivered" upon receipt of the product(s) at the designated delivery address at the designated delivery address. For all other packages, we will try to find a safe secure place to leave your parcel as determined by the carrier delivering the package. In the event of a repeated issue with any particular address provided for you, we reserve the right to request an alternate address in order to fulfill your next order.

## **10. UNABLE TO DELIVER**

Please note that an order can be delivered to a neighbor, in case a delivery attempt is unsuccessful. Delivery to a neighbor address is upon judgment of the driver. Signature required orders which cannot be delivered will be returned to warehouse as stated above. The carrier will generally determine if the parcel can be left in a

secure place at your delivery address. Your package may be returned to us if there is no safe place to leave the package at the point of delivery, where the package is safe from weather and is not visible to passersby. For lost or missing packages, we will provide you with the information of the carrier and tracking number associated with your order so that you may contact them directly to track your package.

## **11. RISK AND TITLE**

The product(s) will be at your risk from the time of delivery. Ownership of the product(s) will only pass to you when we receive full payment of all sums due in respect of the products, including delivery charges, or upon delivery (as defined in Clause 9 above), whichever event occurs later in time.

## **12. PRICE AND PAYMENT**

The price of the products shall be the one quoted from time to time on our Website or Mobile App, except where there is an error. While we take care to ensure that all prices quoted on our Website or Mobile App are accurate, errors may occur. If we discover an error in the price of any product(s) you have ordered, we will inform you as soon as possible and give you the option of reconfirming the order at the correct price or cancelling it. If we are unable to contact you, the order will be treated as cancelled and if you have already paid for the product(s) you will receive a full refund. All prices are in US dollars only.

We are under no obligation to sell the product(s) to you at the incorrect (lower) price (even after we have sent you a Shipment Confirmation) if the pricing error is obvious and unmistakable and could have reasonably been recognized by you as such. All prices are exclusive of shipping charges and sales tax (if applicable). The total cost of the order is the price of the product(s) ordered plus the delivery charge and sales tax (if applicable). Prices may change at any time.

Sales tax is charged (if applicable) according to the shipping address of your order as required by applicable law.

Once you have finished shopping on the Website, all the products you wish to purchase are added to your basket. Your next step will be to go through check out. Payment for orders will be made to ITX USA LLC. The amount of the purchase will not be charged to your card until your order has been shipped to the delivery address. By clicking on the "Finalize Order" button, you are confirming that the credit card is yours. Cards are subject to validation checks and authorization by your card issuer. If we do not receive the required authorization, we will not be liable for any delay or non-delivery.

If payment is made via PayPal or merchandise credit card issued by ITX USA, LLC, the amount will be charged upon confirmation of your order.

## **13. EXCHANGES/RETURNS POLICY**

If you wish to receive a refund within the period specified in Clause 8 above, you can make a return by giving the products to the Courier arranged by us within thirty

(30) days of the date of the Shipment Confirmation, unless a longer period of time is specified in writing at the time of purchase, Order Confirmation, or Shipment Confirmation. Return costs will be deducted from the refunded price. You should send the product in the same package received by following the directions contained in the section regarding "RETURNS" within the Buying Guide posted to our Website. You have the possibility as well to return the product to us at the following address

However, you will be responsible for the cost of returning the product to us if you do not utilize the return option offered by us. Please note that if you return the goods to us at our expense, we will be entitled to charge you for the direct cost we might incur as a result. If you have any doubts you can contact us through our "Contact Us" webpage or at the telephone number xxxxxx.

Please include with the product being returned all original boxes, instructions, documents, and wrappings. After reviewing the product, we will let you know whether or not you have a right to a refund based on our Return and Exchange policy conditions. We will process your refund as soon as possible and in any case; within thirty (30) days of the date the returned goods have been received by us. We will refund any money received from you (except shipping costs) using the same method used to make payment if the card is available. If not, subject to any legal requirements, we will issue you merchandise credit.

We will only accept returns and exchanges for product that is new, unworn, unwashed, and unaltered merchandise with all internal garment tags intact.

## **RETURNS OF DEFECTIVE PRODUCTS**

In circumstances where you consider that the product does not conform to your order, you should promptly contact us by telephone at xxxx or via chat with details of the product and a description of the defect.

You may return the product to us by giving the products to the Courier arranged by us. Upon receipt of the returned product, we will fully examine it and notify you of your right to a replacement or refund (if any) via email within a reasonable period of time. We aim to process the refund or replacement as soon as possible and, in any case, within thirty (30) days of the date we confirmed to you via email that you are entitled to a refund or replacement for the non-conforming product.

If any defect exists, defective products will be refunded in full, including a refund of the delivery charges (if any) and any reasonable costs incurred by you in returning the product. We will always refund any money using the method used to make payment provided the same is available. If not we will issue merchandise credit.

## **14. LIABILITY AND DISCLAIMERS**

We publish information on the Site and Mobile App as a convenience to you. While we attempt to provide accurate and timely information, there may be inadvertent technical or factual inaccuracies and typographical errors. We reserve the right to make corrections and changes to the Site or Mobile App at any time without notice. The products described in the Site or Mobile App may not be available in your region.

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IN NO EVENT SHALL UTERQUE, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, OR CONTENT OR SERVICE PROVIDERS BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOSSES OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) (COLLECTIVELY, "DAMAGES") ARISING FROM OR IN ANY WAY RELATED TO THE USE OF, OR THE INABILITY TO USE, OR THE PERFORMANCE OF THE SITE OR MOBILE APP, OR THE CONTENT AND MATERIALS OR FUNCTIONALITY ON OR ACCESSED THROUGH THE SITE OR MOBILE APP,



INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, OR ANTICIPATED PROFITS, OR LOST BUSINESS, DATA OR SALES OR ANY OTHER TYPE OF DAMAGE, TANGIBLE OR INTANGIBLE IN NATURE, EVEN IF UTERQUE OR ITS REPRESENTATIVE OR SUCH INDIVIDUAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THIS LIMITATIONS ON IMPLIED WARRANTIES OR EXCLUSIONS OF LIABILITY FOR CERTAIN TYPES OF DAMAGES; AS A RESULT, THE LIMITATIONS OR EXCLUSIONS OF LIABILITY CONTAINED HEREIN MAY NOT APPLY TO YOU IN WHOLE OR IN PART AND THE FOREGOING PARAGRAPH SHALL NOT APPLY TO A RESIDENT OF NEW JERSEY TO THE EXTENT DAMAGES TO SUCH NEW JERSEY RESIDENT ARE THE RESULT OF UTERQUE'S NEGLIGENT, FRAUDULENT, OR RECKLESS ACT(S) OR INTENTIONAL MISCONDUCT.

Due to the open nature of the Website and/or Mobile App, and the potential for errors in the storage and transmission of digital information, we do not warrant the accuracy and security of information transmitted to or obtained from the Website or Mobile App unless otherwise expressly set out on the Website or Mobile App.

## **15. INTELLECTUAL PROPERTY**

The Site and Mobile App, including all of its information and contents, such as text, data, wallpaper, icons, characters, artwork, images, photographs, graphics, music, sound, messages, graphics, software and the HTML used to generate the pages (collectively, "Materials"), is UTERQUE property or that of our suppliers or licensors and is protected by patent, trademark and/or copyright under United States and/or foreign laws. Except as otherwise provided on the Site, the Mobile App, or in these Terms, you may not use, download, upload, copy, print, display, perform, reproduce, publish, modify, delete, add to, license, post, transmit, or distribute any Materials from the Site or Mobile App in whole or in part, for any public or commercial purpose without the specific prior written permission of UTERQUE. We grant you a personal, limited, non-exclusive, nontransferable license to access the Site and/or Mobile App and to use the information and services contained on the Site and/or Mobile App. We reserve the right, for any reason or for no reason, in our sole discretion and without notice to you, to revise the products and services described on the Site or Mobile App and to terminate, change, suspend or discontinue any aspect of the Site or Mobile App, including, but not limited to, the Materials on the Site or Mobile App as well as features and/or hours of availability of the Site or Mobile App, and we will not be liable to you or to any third party for doing so. Subject to Clause 27, we may also impose rules for and limits on use of the Site or Mobile App or restrict your access to part, or all, of the Site or Mobile App without notice or penalty. We have the right to change these rules and/or limitations at any time, in our sole discretion.

As between you and UTERQUE, (or any other company whose marks appear on the Site or Mobile App), UTERQUE (or the respective company) is the owner and/or authorized user of any registered or unregistered trademark, trade name and/or service mark appearing on the Site or Mobile App, and is the copyright owner or licensee of the Materials on the Site or Mobile App, unless otherwise indicated. The

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UTERQUE makes no claim that the Site or Mobile App may be lawfully viewed or that content may be downloaded outside of the United States. Access to the content may not be legal by certain persons or in certain countries. If you access the Site or Mobile App from outside the United States, you do so at your own risk and you are responsible for compliance with the laws of the jurisdiction.

## **16. COPYRIGHT AND/OR TRADEMARK INFRINGEMENT**

If you believe a work on the Site or Mobile App constitutes infringement of your copyright, trademark or other intellectual property rights please provide our Designated Agent with a written communication containing the following information:

- 1. evidence of your authorization to act on behalf of the owner of the copyrighted work or trademark;
- 2. a description of the copyrighted work or trademark that you claim has been infringed;
- 3. description of where the alleged infringing material is located on the Site or Mobile App, including the permalink where the material is located;
- 4. your address, telephone number, and email address;
- 5. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner or trademark owner, its agent, or the law;
- 6. 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 trademark owner or authorized to act on the owner's behalf; and

- 7. your physical or electronic signature.

UTERQUE 's Designated Agent for notice of claims of copyright infringement and trademark infringement can be reached at [contact\\_us@UTERQUE.com](mailto:contact_us@UTERQUE.com).

## **17. INDEMNITY**

You agree to indemnify and hold UTERQUE, its directors, officers, employees, agents and affiliates harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorneys' fees, in any way arising from, related to or in connection with your (including your dependents' or agents') violation of these Terms or the posting or transmission of any materials on or through the Site or Mobile App by you, including, but not limited to, any third party claim that any information or materials you provide infringes any third party proprietary right.

## **18. WRITTEN COMMUNICATIONS**

When using our Site or Mobile App, you accept that communication with us will be mainly electronic. We will contact you by email or provide you with information by posting notices on our Website or Mobile App, push notifications or messages. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing.

## **19. REGISTRATION, PASSWORDS, AND SECURITY**

To access some of our services you will have to complete an online registration form. You agree that all information which you submit ("Registration Information") is true and complete and that you will update your Registration Information to keep this information true and complete.

Upon registering, you will create a password. You are solely responsible for any use of or action taken under your password on the Site or Mobile App. Your password may be used only to review information regarding potential and completed transactions, purchase or cancel purchases of products, change your preferences, post content and otherwise access and use the Site, the Mobile App, and services on the Site or Mobile App in accordance with these Terms. You are solely responsible for maintaining the confidentiality and security of your password, and you hereby agree not to disclose your password to any third party (other than third parties authorized by you to use your account). You accept full responsibility for all transactions and other activities placed or conducted through your account and agree to and hereby release UTERQUE from any and all liability concerning such transactions or activity. You agree to notify UTERQUE immediately of any actual or suspected loss, theft or unauthorized use of your account or password. UTERQUE has no obligation to inquire as to the authority or propriety of any use of or action taken under your password and will not be responsible for any loss to you arising from any such use or action or from your failure to comply with the above. UTERQUE will take reasonable security precautions when using the Internet, telephone or other means to transport data or other communications, but expressly disclaims any and all liability

for the accessing of any such data or communications by unauthorized persons or entities.

## **20. POSTED CONTENT AND SUBMISSIONS**

As part of your use of the Site or Mobile App and services offered on the Site or Mobile App, you may upload, post, distribute or disseminate (collectively, "post") content and material (including but not limited to, photographs, images you have taken, captions and comments), or you may send or email us material (including but not limited to, photographs you have taken, articles you have written, captions, and comments) which we, at our discretion, may allow you to post (collectively, the "Posted Content") on the Site or Mobile App. You hereby grant UTERQUE a right (including any moral rights) and worldwide license to use the Posted Content on the Site or Mobile App and to promote and advertise the Site or Mobile App and UTERQUE in any way.

You also warrant that if you are not the holder of any such rights, the holder of such rights has completely and effectively waived all such rights and validly and irrevocably granted you the right to grant the license stated above. You acknowledge and agree that you are solely responsible for the form, content and accuracy of any Posted Content. You agree that you will not post any false, inaccurate material or delete or revise any material that was not posted by you. You are responsible for your own postings and are responsible for the consequences of your postings. You agree not to do any of the following:

- 1. post any material that is copyrighted or trademarked unless you own the copyright or trademark or have the owner's permission (including requisite consents and releases) to post it;
- 2. post any material that reveals a trade secret, unless you own the trade secret or have the owner's permission to post it;
- 3. post any material that infringes on any intellectual property right of another or on the privacy or publicity rights of another;
- 4. post any material that is unlawful, obscene, pornographic, sexual, indecent, defamatory, threatening, harassing, abusive or hateful to another user or to any other person or entity;
- 5. post any chain letter or pyramid scheme; or
- 6. post any material that contains a virus, trojan horse, worm, time bomb or other computer programming routine or engine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information.

UTERQUE does not represent or guarantee the truthfulness, accuracy or reliability of any Posted Content or endorse any opinions expressed by a user. You acknowledge that any reliance on Posted Content by other users will be at your own risk. UTERQUE does not confirm that each user is who he or she claims to be. UTERQUE exercises a great effort to protect Posted Content from being misused. However, if misuse has occurred UTERQUE is in no way liable for such misuse. Because UTERQUE is not involved in user-to-user dealings and does not control the behavior of participants on the Site or Mobile App, in the event that you have a dispute with one or more users, you release UTERQUE from any claims, demands and damages

(actual and consequential, direct and indirect) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute. UTERQUE acts as a passive conduit for Posted Content and has no obligation to screen or monitor Posted Content. If UTERQUE becomes aware of any Posted Content that allegedly may not conform to these Terms, UTERQUE may investigate the allegation and determine in its sole discretion whether to take action in accordance with these Terms. UTERQUE has no liability or responsibility to users for performance or nonperformance of such activities. You may find some Posted Content to be offensive, indecent, harmful, inaccurate, objectionable, mislabeled or deceptively labeled. UTERQUE expects that you will use caution and common sense when using the Site and Services.

UTERQUE HAS THE ABSOLUTE RIGHT TO REMOVE AND/OR DELETE WITHOUT NOTICE ANY POSTED CONTENT THAT IT DEEMS OBJECTIONABLE. YOU CONSENT TO SUCH REMOVAL AND/OR DELETION AND WAIVE ANY CLAIM AGAINST UTERQUE FOR SUCH REMOVAL AND/OR DELETION.

UTERQUE IS NOT RESPONSIBLE OR LIABLE FOR FAILURE TO STORE POSTED CONTENT OR OTHER MATERIALS YOU TRANSMIT THROUGH THE SITE OR MOBILE APP. YOU SHOULD TAKE MEASURES TO PRESERVE COPIES OF ANY DATA, MATERIAL, CONTENT OR INFORMATION YOU POST ON THE SITE OR MOBILE APP.

We are pleased to hear from our visitors and welcome your comments. Because of the large number of ideas and works that UTERQUE has already developed, or that have been suggested to us by third parties, the possibility exists that any idea, suggestion or submission that you may make through the Site or Mobile App is similar to information, ideas or suggestions already known to us. By disclosing any information, idea, suggestion or other material through the Site or Mobile App, you agree that (a) no confidential relationship is established by virtue of such submission and that the material is not submitted in confidence and (b) no obligation of any kind is assumed by, nor may be implied against, UTERQUE by virtue of such submission. Moreover, no liability shall result from the use of such information, ideas or suggestions by UTERQUE.

## **21. NOTICES**

All notices given by you to us should be given to us preferably via the avenues of contact provided on our "Contact Us" webpage. Subject to and as otherwise specified in Clause 18 above, we may give notice to you via either the email, message, push notification (if consent has been provided) or postal address you provide to us when placing an order.

Notice will be deemed received and properly served immediately when posted on our Website or Mobile App, 24 hours after an email is sent, or three days after the date of posting of any letter mailed. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email that such email was sent to the specified email address of the addressee.

## **22. BINDING NATURE; ASSIGNMENT**

These Terms, and our Privacy Policy are binding on you and us and on our respective heirs, successors and assigns. You may not transfer, assign, charge or otherwise dispose of these Terms or our Privacy Policy, or any of your rights or obligations arising under it, without our prior written consent. We may transfer, assign, charge, sub-contract or otherwise dispose of these Terms and our Privacy Policy, or any of our rights or obligations arising under them, at any time.

## **23. EVENTS OUTSIDE OUR CONTROL**

We will not be liable or responsible for any failure to perform, or delay in performance of any of our obligations under an order you have placed that is caused by events outside our control (a "Force Majeure Event"). A Force Majeure Event shall include any act, event, non-happening, omission or accident beyond our reasonable control and shall include in particular (without limitation) the following:

- 1. Strikes, lock-outs or other industrial action.
- 2. Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
- 3. Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.
- 4. Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- 5. Impossibility of the use of public or private telecommunications networks.
- 6. The acts, decrees, legislation, regulations or restrictions of any government.
- 7. Any shipping, postal or other relevant transport strike, failure or accidents.

Our performance under any order you have placed is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavors to bring the Force Majeure Event to a close or to find a solution by which our obligations may be performed despite the Force Majeure Event.

## **24. WAIVER**

No failure of UTERQUE to enforce any of its rights or remedies under these Terms will act as a waiver of such rights and remedies. A waiver by us of any default shall not constitute a waiver of any subsequent default. No waiver by us of any of these Terms shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with the provisions of the clause on Notices (Clause 21) above.

## **25. SEVERABILITY**

If any of these Terms or any provisions of an order are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **26. ENTIRE AGREEMENT**

These Terms and any document expressly referred to in them represent the entire agreement between you and us in relation to the subject matter of these Terms and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing. Both you and us acknowledge that, in entering into these Terms, neither you nor us has relied on any representation, undertaking or promise given by the other or implied from anything said or written in negotiations between you and us prior to such Terms, except as expressly stated in these Terms.

## **27. OUR RIGHT TO MODIFY THESE TERMS**

We have the right to revise and amend these Terms at any time. Your use of the Site or Mobile App after we post changes to these Terms constitutes your agreement to those changes prospectively from the date of such changes. You will be subject to the Terms and UTERQUE policies in force at the time that you order products from us.

## **28. ADDITIONAL TERMS FOR USERS OF THE MOBILE APP PLATFORM**

**Users of the Apple Mobile App Platform.** If you download and/or use our Site and/or apps using an iPhone or iPad: You, the end-user of Mobile App, acknowledge that these Terms are entered into by and between UTERQUE and you and not with Apple, Inc., and Apple, Inc. is not responsible for the Mobile App and/or its content. Notwithstanding the foregoing, you acknowledge that Apple, Inc. and its subsidiaries are third-party beneficiaries of these Terms and that Apple, Inc. has the right (and is deemed to have accepted the right) to enforce these Terms. You acknowledge that Apple, Inc. has no obligation whatsoever to maintain or support the Mobile App. You acknowledge that you have reviewed the App Store Terms and Conditions (located online at <http://www.apple.com/legal/itunes/us/terms.html#APPS>).

End User License Agreement (the “LAEULA”) published by Apple, Inc. (located online at <http://www.apple.com/legal/itunes/appstore/dev/stdeula/>). For purposes of these Terms, the Mobile App is considered the “Licensed Platform” as defined in the LAEULA and UTERQUE is considered the “Platform Provider” as defined in the LAEULA. If any terms of these Terms conflict with the terms of the LAEULA, the terms of these Terms shall control. You further acknowledge and agree that in no event will Apple, Inc. be responsible for any claims relating to the Mobile App (including, without limitation, a third party claim that the Mobile App infringes that third party’s intellectual property rights) or your use or possession of the Mobile App, including but not limited to: (i) product liability claims; (ii) any claim that the Mobile App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. You acknowledge and agree that, to the maximum extent permitted by applicable law, Apple, Inc. will have no warranty obligation whatsoever with respect to the Mobile App.

**Mobile App Platform Updates** We may make available for download certain Mobile App updates or upgrades to the Mobile App to update, enhance, or further develop the Mobile App (“Platform Updates”). The license granted herein allows you to

download and use the Platform Updates to update the Mobile App on any device that you own or control. This Agreement does not allow you to update devices that you do not own or control, and you may not make the Platform Updates available over a network where it could be used by multiple devices or multiple computers at the same time. You may not make any copies of the Platform Updates, unless such copy is authorized in writing by us.

Except as and only to the extent permitted by applicable law, or by licensing terms governing use of open-sourced components included with the Mobile App, you may not copy, decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Mobile App, Platform Updates, or any part thereof. Any attempt to do so is a violation of the rights of UTERQUE and its licensors of the Mobile App and Platform Updates. By storing content on your device, you are making a digital copy. In some jurisdictions, it is unlawful to make digital copies without prior permission from the rights holder. The Mobile App and Platform Updates may be used to reproduce materials so long as such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorized or legally permitted to reproduce.

We may, at our discretion, automatically upload Platform Updates to your device. You agree to accept these Platform Updates, and to pay for any costs associated with receiving them. The Mobile App and Platform Updates are subject to United States export laws and regulations. You must comply with all domestic and international export laws and regulations that apply to the Mobile App and Platform Updates. These laws include restrictions on destinations, end users, and end use.

- 29.** Uses of the Mobile App expressly consent to receive push notifications from and on behalf of UTERQUE.

### **30. MISCELLANEOUS**

You acknowledge and agree that your use of the Site and/or Mobile App may involve you providing an “electronic signature” indicating your desire to use the Site and/or Mobile App. Your “electronic signature” indicates your acceptance of these Terms, and your consent to receive communications about these Terms electronically. If you wish to receive communications in another manner, you may contact UTERQUE at “Contact US” [www.UTERQUE.com](http://www.UTERQUE.com) to change your communication preferences. You may not use or otherwise export or re-export the Mobile App except as authorized by United States law and the laws of the jurisdiction in which the Mobile App was obtained. In particular, but without limitation, the Mobile App may not be exported or re-exported (a) into any U.S. embargoed countries, or that has been designated by the U.S. Government as a “terrorist supporting country” or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. By using the Mobile App, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use the Mobile App for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture, or production of nuclear, missiles, or chemical or biological weapons.



NOTICE FOR CALIFORNIA RESIDENTS. Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: If you have a question or complaint regarding the services provided on the Site and/or Mobile App, please contact us at 1-855-336-2909. You may also contact us by writing to ITX USA LLC.,/ Uterque - 500 Fifth Avenue, Suite 400, New York, NY 10110. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by mail at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

### **31. QUESTIONS AND FEEDBACK**

We welcome your questions, comments and feedback. Please send all questions, comments and feedback to us via the contact information provided on our "Contact Us" webpage.

August 21, 2019