

# TERMS OF USE

*These Terms of Use were last revised on June 9, 2014.*

**Twila Kaye International, LLC, a Nevada limited liability company ("TKI") provides the TwilaKaye.com site and related services subject to your compliance with the terms and conditions set forth below. Your use of TwilaKaye.com signifies your acknowledgement of and agreement to these Terms of Use.**

These Terms of Use apply to all users of the website TwilaKaye.com and any other affiliated websites owned or controlled by TKI, including any and all services and online software available through these sites (collectively "TwilaKaye.com"). The term "users" includes both registered members of TwilaKaye.com and any other person that accesses TwilaKaye.com at any point for any amount of time.

**1. TERMS OF SALE.** By placing an order for merchandise through TwilaKaye.com you agree to our terms of sale ("Terms of Sale") set out in this Section.

1.1 Order and Acceptance. Each item in an order that you submit to us constitutes a separate offer to purchase that item. After you place your order through TwilaKaye.com, you will receive a confirmation notice on the website and/or through a confirmation email. The onscreen confirmation notice and/or confirmation email that we send to you does not constitute acceptance of your order. Rather, TKI is not deemed to have accepted any item in your order until that item is shipped or made available for electronic delivery.

1.2 Rejection of Orders. We may reject your order for any reason. Reasons for rejecting an order include:

- item pricing error
- item unavailability
- rejection of payment
- insufficient shipping address
- suspected fraudulent activity
- orders connected with a previous credit card dispute

1.3 Sales Tax. TKI charges sales tax where required by law. If sales tax is charged, the appropriate charges will be added to your merchandise total and displayed in your shopping cart and on your invoice.

1.4 Shipping Charges. For physical goods, prices for items do not include charges for shipping and handling. Separate charges for shipping and handling will be itemized in your shopping cart and on your invoice.

## TERMS OF USE

1.3 Item Shipping Delay / Backorders. All items are subject to stock availability. Items which are temporarily out of stock may incur shipping delays. We will endeavor to ship your item as soon as possible. If we determine we are unable to ship your order in a reasonable time (typically 30 days) we may elect to cancel your order.

1.4 Price Changes. TKI may change the price of any item at any time.

1.5 Fraudulent Activities. TKI will prosecute to the fullest extent of the law any fraudulent activities related to any chargebacks or reversals of a valid charge for an order filled and delivered to you.

1.6 Returns / No Warranties. There are no product warranties of any kind. Electronically delivered goods are not eligible to be returned or exchanged. For any other item besides electronically delivered goods, you may return the item unused and unwashed, in its original condition and packaging, with the tags still attached within 30 days from the date of purchase. Once we have received and validated your item as qualifying for a return, we will allow you to exchange the item or provide you store credit which you may use for a new purchase at TwilaKaye.com. If you return an item not in its original condition or otherwise fail to exercise reasonable care when returning an item, we reserve the right to either (i) reject your return and decline any credit or (ii) to deduct from any credit reasonable repair or other similar costs.

1.7 Resale of Merchandise Prohibited. To protect our intellectual property rights, TKI's policies do not allow merchandise to be resold or reshipped. Any resale of our merchandise for personal or business profit is strictly prohibited. Furthermore, any orders shipping to 'Freight Forwarding Companies' will not be accepted.

## 2. WEBSITE ACCESS

2.1 TKI grants you a limited, revocable, nonexclusive license to access TwilaKaye.com for your own personal use.

2.2 In order to access some features of TwilaKaye.com, you will have to create an account. You may only create one account and may never use another's account. When creating your account, you must provide accurate and complete information. Should any of your information change after submitting it to TwilaKaye.com, you are required to update that information immediately.

2.3 You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify TKI immediately of

## **TERMS OF USE**

any breach of security or unauthorized use of your account. Although TKI will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of TKI or others due to such unauthorized use.

2.4 You agree not to use or launch any automated system, including without limitation, "robots," "spiders," and "offline readers" that accesses TwilaKaye.com. You agree not to collect or harvest any personally identifiable information, including account names, from TwilaKaye.com, nor to use the communication systems provided by TwilaKaye.com for any commercial solicitation or illegal or improper purposes.

2.5 Notwithstanding the foregoing, TKI grants the operators of recognized international public search engines, such as Google and Bing permission to use spiders to copy materials from the site for the sole purpose of creating publicly available searchable indices of the materials. TKI reserves the right to revoke these exceptions either generally or in specific cases.

2.6 Termination of Service: You agree that TKI, in its sole discretion, has the right (but not the obligation) to delete or deactivate your account, block your email or IP address, or otherwise terminate your access to or use of TwilaKaye.com (or any part thereof), immediately and without notice, and remove and discard any content within TwilaKaye.com, for any reason, including, without limitation, if TKI believes that you have acted inconsistently with the letter or spirit of the Terms of Use. Further, you agree that TKI shall not be liable to you or any third-party for any termination of your access to TwilaKaye.com. Further, you agree not to attempt to use TwilaKaye.com after said termination.

2.7 TwilaKaye.com may contain links to third party websites that are not owned or controlled by TKI. TKI has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, TKI will not and cannot censor or edit the content of any third-party site. You expressly relieve TKI from any and all liability arising from your use of any third-party website. Accordingly, we encourage you to be aware when you leave the TwilaKaye.com website and to read the terms and conditions and privacy policy of other websites that you visit.

### **3. THIRD PARTY SUBMISSIONS / INTERACTIVE FEATURES**

3.1 The TwilaKaye.com website may permit the submission, hosting, sharing, and/or publishing of text, photographs, audio, video, or other content, including customer reviews, by you, other users, and other third parties such as our partners or affiliates ("Third Party Submissions").

## TERMS OF USE

3.2 By posting, submitting or uploading a Third Party Submission to any area of TwilaKaye.com, you automatically grant, and you represent and warrant that you have the right to grant, to TKI an irrevocable, perpetual, non-exclusive, fully paid, sublicensable, transferable, worldwide license to use, copy, perform, display, and distribute said Third Party Submission and to prepare derivative works of, or incorporate into other works, said Third Party Submission, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Third Party Submissions to TwilaKaye.com, you automatically grant TKI all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Third Party Submission by any party for any purpose.

3.3 You acknowledge that the interactive features on TwilaKaye.com are not for private communications. You acknowledge that you have no expectation of privacy with regard to any submission to TwilaKaye.com. TKI cannot guarantee the security of any information you disclose through TwilaKaye.com. You make such disclosures at your own risk.

3.4 By posting Third Party Submissions to TwilaKaye.com or by using any other interactive area of the website, you specifically agree to comply with each of the following:

- (a) You will not post or transmit any material that violates or infringes the rights of any other party, including, without limitation, rights of privacy, rights of publicity, copyright, trademark, or other intellectual property rights.
- (b) If your employer has rights to intellectual property you create, you have either (i) received permission from your employer to post or make available the material, including but not limited to any software, or (ii) secured from your employer a waiver as to all rights in or to the material.
- (c) You have fully complied with any third-party licenses relating to the material you post or transmit and have done all things necessary to successfully pass through to TKI any required terms.
- (d) You will not post or transmit any material that is false, deceptive, misleading, or deceitful.
- (e) You will not post or transmit any material that is abusive, hateful, racist, bigoted, sexist, harassing, threatening, inflammatory, defamatory, vulgar, obscene, sexually-oriented, profane or is otherwise in violation of any applicable law, rule or regulation.

## TERMS OF USE

- (f) You will not post or transmit any material that deceptively impersonates any person or entity.
- (g) Your username or the material you submit is not named in a manner that misleads users into thinking that you are another person or company.
- (h) You will post content that constitutes or contains any form of advertising or solicitation or for commercial purposes. Do not post a URL unless it directly relates to an Event.
- (i) You will not post or transmit any software or computer files that contains malware, computer viruses, worms, Trojan horses, rootkits, spyware, adware, and other malicious or unrequested software, computer code, or file.
- (j) You will not post or transmit any content that is intended to promote or commit an illegal act.

Failure to comply with the above rules may lead to you being immediately and permanently banned, with notification to law enforcement and/or your internet service provider.

3.5 When posting Third Party Submissions, you agree never to use a third-party agent, service, or intermediary that offers to post Third Party Submissions to TwilaKaye.com on your behalf ("Posting Agent"). Posting Agents are not permitted to post Third Party Submissions on behalf of others, to cause Third Party Submissions to be so posted, or otherwise access TwilaKaye.com to facilitate posting Third Party Submissions on behalf of others, except with express written permission from TKI.

3.6 TKI reserves the right to modify or discontinue, temporarily or permanently, its website, including sections of classified ads with or without notice at any time. You agree that TKI shall not be liable to you or to any third party for any modification, suspension, or discontinuance of any service.

3.7 You are and shall remain solely responsible for any and all Third Party Submissions you make through TwilaKaye.com. You acknowledge that any information you disclose through TwilaKaye.com becomes public information and can be used by people you do not know. Accordingly, you should exercise caution when deciding to disclose any information on TwilaKaye.com. Any such disclosures are at your own risk.

## TERMS OF USE

3.8 TKI does not prescreen Third Party Submissions submitted and TKI has no duty to monitor any interactive area of its website. Although we may monitor or review Third Party Submissions from time to time, we do not actively monitor the Third Party Submissions of the interactive areas, including Event listings, and we are not under any obligation to do so. Each user is solely responsible and liable for the contents of his or her Third Party Submissions, and we are not responsible in any way for the content or opinions expressed therein. We have the right, but not the obligation, to remove, edit or move, at any time, any material posted, in each case as we deem appropriate. TKI may refuse, to post, deliver, remove, modify or otherwise use or take any action with respect to any submission in any TwilaKaye.com forum.

### **4. LIMITS ON THIRD PARTY SUBMISSIONS - DIGITAL MILLENNIUM COPYRIGHT ACT**

4.1 You understand that when using the TwilaKaye.com website, you will be exposed to Third Party Submissions from a variety of sources, and that TKI is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Third Party Submissions. You further understand and acknowledge that you may be exposed to Third Party Submissions that are inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against TKI with respect thereto, and agree to indemnify and hold TKI, its owners, operators, affiliates, and agents, licensors and licensees, harmless to the fullest extent allowed by law regarding all matters related to your use of the site.

4.2 TKI does not endorse any Third Party Submission or any opinion, recommendation, or advice expressed therein, and TKI expressly disclaims any and all liability in connection with Third Party Submissions.

4.3 TKI does not permit copyright infringing activities and infringement of intellectual property rights on its Website, and TKI will remove all Content and Third Party Submissions if properly notified that such Content or Third Party Submission infringes on another's intellectual property rights. TKI reserves the right to remove Content and Third Party Submissions without prior notice.

4.4 If you are a copyright owner or an agent thereof and believe that any Third Party Submission or other Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (*see* 17 U.S.C 512(c)(3) for further detail):

## TERMS OF USE

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

TKI's designated Copyright Agent to receive notifications of claimed infringement is:

Twila Kaye International, LLC  
Attn: Copyright Agent  
8736 Raindrop Canyon Ave.  
Las Vegas, NV 89129  
*copyright@TwilaKaye.com*

You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

4.5 Counter-Notice. If you believe that your Third Party Submission that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the content in your Third Party Submission, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;

## **TERMS OF USE**

- Identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;

- A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and

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

- Your name, address, and telephone number.

- A statement that the you consent to the jurisdiction of Federal District Court for the judicial district in which your address is located, or if your address is outside of the United States, for the Federal District Court in Las Vegas, Nevada.

- A statement that you will accept service of process from the person who provided the Copyright Notice or an agent of such person

If a counter-notice is received by the Copyright Agent, TwilaKaye.com may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at TwilaKaye.com sole discretion.

### **5. INTELLECTUAL PROPERTY INFORMATION**

5.1 With the exception of Third Party Submissions, all content on the TwilaKaye.com website, including without limitation, the text, software, scripts, tools, graphics, photos, sounds, music, videos, and interactive features ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to TKI. The Content and Marks are protected to the maximum extent permitted by intellectual property laws and international treaties. Content displayed on or through TwilaKaye.com is protected by copyright as a collective work and/or compilation, pursuant to copyrights laws, and international conventions.



## **TERMS OF USE**

5.2 Any reproduction, modification, creation of derivative works from or redistribution of the site or the collective work, and/or copying or reproducing the sites or any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of TKI.

5.3 You further agree not to reproduce, duplicate or copy Content from TwilaKaye.com without the express written consent of TKI, and agree to abide by any and all copyright and other legal notices displayed on TwilaKaye.com. You may not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in TwilaKaye.com. Without limiting the foregoing, you agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any aspect of TwilaKaye.com.

### **6. WARRANTY DISCLAIMER**

6.1 THERE IS NO GUARANTEE THAT ANY EDUCATIONAL MATERIAL PROVIDED OR PURCHASED FROM TWILAKAYE.COM WILL LEAD TO ANY PARTICULAR RESULTS OR THAT THE USE OF THE MATERIAL WILL BE SUCCESSFUL FOR YOU.

6.2 TWILAKAYE.COM, INCLUDING ANY CONTENT, THIRD PARTY SUBMISSIONS, OR ANY SITE-RELATED SERVICE, IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TKI HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

6.3 TKI MAKES NO WARRANTY THAT: (I) TWILAKAYE.COM WILL MEET YOUR REQUIREMENTS, (II) TWILAKAYE.COM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE SERVICES THEMSELVES (OR ANY PART THEREOF), WILL MEET YOUR EXPECTATIONS, OR (IV) ANY ERRORS IN TWILAKAYE.COM WILL BE CORRECTED.

6.4 TKI, ITS AFFILIATES AND ITS SPONSORS ARE NEITHER RESPONSIBLE NOR LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO TWILAKAYE.COM, SITE-RELATED SERVICES AND/OR CONTENT OR INFORMATION CONTAINED WITHIN TWILAKAYE.COM. YOUR SOLE REMEDY FOR DISSATISFACTION WITH TWILAKAYE.COM AND/OR SITE-RELATED SERVICES IS TO STOP USING TWILAKAYE.COM AND/OR THOSE SERVICES.

## TERMS OF USE

### 7. INDEMNITY

7.1 You agree to defend, indemnify and hold harmless TKI, its affiliated companies, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:

- (a) your use of and access to the TwilaKaye.com website;
- (b) your participation in any interactive area of the TwilaKaye.com website including any material posted by you.
- (c) your violation of any term of these Terms of Service;
- (d) your violation of any third party right, including without limitation any copyright, property, or privacy right;
- (e) your violation of any law, rule or regulation of the United States, any state, or any other country;
- (f) any claim that one of your Third Party Submissions or a Third Party Submission posted using your account caused damage to another third party.
- (g) any other party's access and use of TwilaKaye.com with your account.

7.2 This defense and indemnification obligation will survive these Terms of Service and any termination of your use of the TwilaKaye.com website.

### 8. PRIVACY POLICY

8.1 TKI has established a Privacy Policy to explain to users how personal information is collected and used, which is located at the following web address:

*<http://www.TwilaKaye.com/privacypolicy>*

8.2 Your use of TwilaKaye.com signifies acknowledgement of and agreement to our Privacy Policy. You further acknowledge and agree that TKI may, in its sole discretion, preserve or disclose content posted by you, as well as your information, such as email addresses, IP addresses, timestamps, and other user information, if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably

## TERMS OF USE

necessary to comply with legal process, enforce the terms of use, or respond to claims from third-parties.

### 9. GOVERNING LAW / DISPUTES

9.1 You agree that the TwilaKaye.com website shall be deemed solely based in the State of Nevada.

9.2 The TwilaKaye.com website shall be deemed a passive website that does not give rise to personal jurisdiction over TKI, either specific or general, in jurisdictions other than Nevada.

9.3 Governing Law / Jurisdiction. These Terms of Use will be governed and interpreted in accordance with the internal laws of the State of Nevada applicable to agreements entered into and to be wholly performed therein, without regard to principles of conflict of laws. If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed from the remainder of these Terms of Use, which shall remain in full force and effect. These Terms of Use are governed by a mandatory arbitration clause set out below, however, if a court is necessary in whole or in part to enforce these Terms of Use, You consent and submit to the sole and exclusive jurisdiction of the state and federal courts located in Clark County, Nevada and waive any objection to personal jurisdiction, to venue, or to convenience of forum.

9.4 Disputes. Any dispute, claim or controversy arising out of or relating to the TwilaKaye.com website, this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in Las Vegas, Nevada, before one arbitrator. At the option of the first to commence an arbitration, the arbitration shall be administered either by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, or by the American Arbitration Association pursuant to its Commercial Arbitration Rules. The arbitrator may not award any consequential, indirect, exemplary, special or incidental damages arising from or relating to your use of the TwilaKaye.com website (including, without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss). Judgment on the Award may be entered in any court having jurisdiction. You and we will each pay one-half of the costs and expenses of such arbitration, and each of the parties will separately pay their counsel fees and expenses. Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its intellectual property rights ("intellectual property rights" means patents, copyrights, trademarks, and trade secrets, but not privacy or publicity rights). Either party may also seek relief in a small claims court for disputes or claims within the scope of that court's jurisdiction.

## TERMS OF USE

9.5 Class Action Waiver. You agree that any arbitration shall be conducted in your individual capacity only and not as a class action or other representative action, and you expressly waive your right to file a class action or seek relief on a class basis. YOU AND TKI AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.

### 10. ASSIGNMENT / MODIFICATION

10.1 Assignment. These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by TKI without restriction.

10.2 Modification. We reserve the right to amend these terms and conditions at any time. If we do this, we will post the amended Terms of Use on this page and indicate at the top of the page the date the Terms of Use were last revised. Your continued use of TwilaKaye.com after any such changes constitutes your acceptance of the new Terms of Use. If you do not agree to any of these terms or any future Terms of Use, do not use or access (or continue to access) TwilaKaye.com.

### 11. ABILITY TO ACCEPT TERMS OF SERVICE

You hereby declare, represent and warrant that you are over eighteen (18) years of age, or that you are an emancipated minor, or that you possess legal parental or guardian consent, and that you are fully able and competent to legally bind yourself to and abide by all of the terms, conditions, obligations, declarations, affirmations, representations, and warranties set forth in these Terms of Use. TwilaKaye.com is not intended for use of children under eighteen (18) years old. Children under eighteen (18) years of age are hereby explicitly prohibited from making purchases using the TwilaKaye.com website.

### 12. CONSENT

By using TwilaKaye.com in any way you are agreeing to comply with these Terms of Use. Should you object to any term or condition of the Terms of Use, any guidelines, or any subsequent modifications thereto or become dissatisfied with TwilaKaye.com in any way, your only recourse is to immediately discontinue your use of TwilaKaye.com.