

Hill and Markes, Inc. Terms of Use

Modification to Terms of Use

Amendments to this Agreement will be posted on the Site. To the maximum extent allowed by law and except as otherwise expressly provided at the time of such amendment, such amendments are effective when posted. Your continued use of the Site following the posting of any amendment shall constitute your acceptance thereof. If you do not agree to the terms of this Agreement or any amendment, do not use the Site.

Using the Site

Subject to compliance with the Agreement, including but not limited to applicable age and residency restrictions, you have a limited, non-transferrable, non-sublicensable and revocable license to access and use the Site for its intended purpose which shall be for your personal use and not, for example, for reselling or outsourcing the Site's functionality or otherwise using it as a service bureau or data center. You may print copies of Site materials as reasonably necessary for permitted use of the Site, but such copies shall not be distributed to others. Uses of the Site not expressly authorized herein are prohibited.

You agree to ascertain and obey all applicable local, state, federal, and international laws (including minimum age requirements) in regard to the receipt, possession, use, and sale of any product obtained through the Site. Subject to applicable law, Hill and Markes, Inc. reserves the right, with or without prior notice, to do any one or more of the following: (a) limit the available quantity of, or discontinue any offering of, any product or promotion; (b) impose conditions on your use of the Site; and (c) bar you from making or completing any or all transaction(s). You agree to pay all charges that may be incurred by you or on your behalf through the Site, at the price(s) in effect when such charges are incurred including, without limitation, all shipping and handling charges. In addition, you remain responsible for any taxes that may be applicable to your purchase transactions conducted using the Site.

Account Registration, Password and Security

Some portions of the Site require you to register and you may be asked to select a password. You agree to provide accurate and truthful information and to update such information to keep it true and accurate. Select a password that would be difficult to guess, and change it regularly. You agree not to share your password or share access to your account. You agree that you are responsible for activities that occur under your account. You agree to notify us immediately of unauthorized use of your password or account. We reserve the right to take such action in our discretion to help ensure the security of the Site, including, without limitation, terminating an account. NOTWITHSTANDING THE ABOVE, WE MAY RELY ON THE AUTHORITY OF ANYONE ACCESSING YOUR ACCOUNT OR USING YOUR PASSWORD, AND IN NO EVENT, AND UNDER NO CIRCUMSTANCES, SHALL WE BE HELD LIABLE TO YOU FOR ANY LIABILITIES OR DAMAGES ARISING OUT OF (I) ANY ACTION OR INACTION OF HILL AND MARKES, INC. UNDER THIS PROVISION OR (II) ANY COMPROMISE OF THE CONFIDENTIALITY OF YOUR ACCOUNT OR PASSWORD OR ANY UNAUTHORIZED ACCESS TO YOUR ACCOUNT OR USE OF YOUR PASSWORD EXCEPT TO THE EXTENT SUCH COMPROMISE, ACCESS OR USE IS CAUSED SOLELY BY HILL AND MARKES, INC.'S BREACH OF THE EXPRESS TERMS OF THIS AGREEMENT, AS PROVED BY CLEAR AND CONVINCING EVIDENCE. YOU MAY NOT USE ANYONE ELSE'S ACCOUNT AT ANY TIME.

Purchase Transactions

Purchases made in connection with the Site are subject to Hill and Markes, Inc.'s General Terms and Conditions of Sale. All descriptions, images, references, features, content, specifications, products, and prices of products and services described or depicted on the Site are subject to change at any time without notice.

Prohibited Conduct

You agree not to: (a) access or attempt to access any information, documents, images, software or material (individually and collectively, Materials) that you are not authorized to access and/or through any means that you are not authorized to use such as any means not intentionally made available through the Site; (b) disrupt or interfere with the security of, or otherwise cause harm to the Site, or to any Materials, systems resources, accounts, passwords, servers or networks connected to or accessible through the Site or any affiliated or linked websites; (c) access or use the Site in any manner that could damage, disable, overburden or impair any server or network used by Hill and Markes, Inc. in connection with the Site; (d) use any Materials in connection with the Site in any manner that infringes upon any intellectual property rights or other rights of any party; (e) transmit unsolicited or bulk communications to any Hill and Markes, Inc. account holder or to any hillmarkes.com email address or other email addresses associated with Hill and Markes, Inc.; (f) post or otherwise submit any software, programs or Materials via the Site that are harmful or disruptive of another's equipment, software or other property, including any corrupted files, time bombs, Trojan Horses, viruses and worms; (g) disrupt, interfere with or inhibit any other user from using and enjoying the Site or other websites, Materials or services associated with Hill and Markes, Inc.; (h) violate any applicable laws or regulations related to the access to or use of the Site, and/or engage in any activity prohibited by this Agreement; (i) compile, use, download or otherwise copy any Materials available on the Site (except as expressly permitted by the Agreement), or transmit, provide or otherwise distribute (whether or not for a fee) such Materials to any third party; (j) use the Site to engage in any chain letters, contests, junk email, pyramid schemes, spamming, surveys or any other duplicative or unsolicited messages (commercial or otherwise); (k) use any robot, spider, or other programmatic or automatic device, to obtain information from the Site or otherwise monitor or copy any portion of the Site; (l) frame, mirror, or use framing techniques on any part of the Site without Hill and Markes, Inc.'s express prior written consent; (m) make any use of data extraction, scraping, mining, or other data gathering tools, or create a database by systematically downloading or storing Site Materials, or otherwise scrape, collect, store, or, except pursuant to the limited license granted by this Agreement, use any Materials; (n) modify, adapt, translate, reverse engineer, decompile, or disassemble any portion of the Site; (o) remove any copyright, trademark, or other proprietary rights notice from the Site or Materials; and/or (p) use any Hill and Markes, Inc. company domain name as a pseudonymous return email address. These examples of prohibited conduct are illustrative and are not exhaustive. Hill and Markes, Inc. reserves the right to take action, up to and including terminating a user's account, if the user is determined, in Hill and Markes, Inc. sole discretion, to have engaged in prohibited conduct or otherwise violated this Agreement.

Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HILL AND MARKES, INC., ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, AGENTS, REPRESENTATIVES, SERVICE PROVIDERS, SUPPLIERS, AND MERCHANTS (HILL AND MARKES, INC. AND SUCH OTHER INDIVIDUALS AND ENTITIES INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS HILL AND MARKES, INC.-RELATED PARTIES) SHALL NOT BE RESPONSIBLE FOR, NOR BE LIABLE TO YOU OR ANY THIRD PARTY FOR, ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS ARISING

OUT OF OR RELATING IN ANY WAY TO THE SITE, OR INFORMATION CONTAINED WITHIN THE SITE, INCLUDING, BUT NOT LIMITED TO, YOUR CONDUCTING OF ANY TRANSACTIONS BY OR THROUGH THE SITE. ADDITIONALLY, TO THE MAXIMUM EXTENT AUTHORIZED BY LAW, THE TOTAL AGGREGATE AND COMBINED LIABILITY OF HILL AND MARKES, INC.-RELATED PARTIES SHALL BE LIMITED TO THE AMOUNT OF MONEY, IF ANY, THAT YOU EXPENDED IN CONNECTION WITH THE TRANSACTION OR EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY IRRESPECTIVE OF WHETHER A CLAIM IS BROUGHT UNDER CONTRACT, TORT, WARRANTY OR THEORY. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OF LIABILITY SET FORTH ABOVE, SO THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU, AND YOU MAY HAVE RIGHTS IN ADDITION TO THOSE CONTAINED HEREIN. IN SUCH JURISDICTIONS, HILL AND MARKES, INC.-RELATED PARTIES' LIABILITY IS LIMITED TO THE MAXIMUM EXTENT ALLOWED BY LAW.

Disclaimer of Warranties

YOU AGREE AND ACKNOWLEDGE THAT USE OF THE SITE IS WITHOUT WARRANTY OF ANY KIND AND THAT THE ACCESS TO AND USE OF THE SITE, AS PROVIDED UNDER THE AGREEMENT IS PROVIDED AS IS AND AS AVAILABLE BASIS, TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW. ALL WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES BASED ON CUSTOM OR PRACTICE. APPLICABLE LAW MAY NOT ALLOW THE ABOVE EXCLUSION OF IMPLIED WARRANTIES, SO THE EXCLUSION MAY NOT APPLY TO YOU AND SHALL APPLY ONLY TO THE MAXIMUM EXTENT ALLOWED BY LAW. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY ANY USER FROM HILL AND MARKES, INC. OR THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. FOR THE AVOIDANCE OF DOUBT, AND WITHOUT LIMITING THE FOREGOING, HILL AND MARKES, INC. CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SITE, ITS SERVER, OR USER CONTENT WILL BE ERROR-FREE, UNINTERRUPTED, TIMELY, SECURE, FREE FROM VIRUSES AND OTHER HARMFUL COMPONENTS, FREE FROM UNAUTHORIZED ACCESS (INCLUDING THIRD-PARTY HACKERS OR DENIAL OF SERVICE ATTACKS), OR OTHERWISE MEET YOUR REQUIREMENTS.

Additional Disclaimer Related to Third-Party Content and Links to Third-Party Sites

We may display on the Site user content, information, instructions, videos, services, products, and other materials from third parties, and links to third-party sites. The appearance of external hyperlinks generated by third parties does not constitute endorsement by Hill and Markes, Inc. or its affiliates of any content of the linked third-party website, and Hill and Markes, Inc. does not verify or take responsibility for the accuracy, currency, completeness, or quality of the content contained on these sites. Therefore, neither Hill and Markes, Inc. nor its affiliates will be responsible for any errors or omissions or for the results obtained from the use of such information contained on these sites. IN NO EVENT WILL WE BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANYONE FOR ANY DAMAGE OR LOSS ARISING FROM OR RELATING TO ANY USE, CONTINUED USE OR RELIANCE ON ANY THIRD-PARTY CONTENT DISPLAYED ON THE SITE, ANY PRODUCTS, SERVICES OR OTHER MATERIALS RELATING TO ANY SUCH CONTENT, ANY LINKED THIRD-PARTY SITE, OR ANY LINK CONTAINED IN A LINKED SITE.

Indemnity

You agree to defend, indemnify and hold harmless Hill and Markes, Inc., its employees, directors, officers, members, managers, representatives, agents, suppliers or service providers from any loss, liability, claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Site (but excluding claims resulting from our breach of this Agreement), including without limitation, any information or content you submit to the Site, any material you download from the Site or any interference with the operation of the Site.

Submissions

By submitting any comment, idea, suggestion, blog content, or other material to the Site, you grant us a perpetual, non-exclusive, fully-paid, royalty-free, irrevocable, sublicenseable, worldwide license and right to display, use, perform, reproduce, modify, distribute and create derivative works of such material or information submitted in any media, software, or technology of any kind now existing or developed in the future. By providing any such material or information, you represent and warrant that public posting and use of such material or information by Hill and Markes, Inc. will not infringe on or violate the rights of any third party.

Trademarks and Copyrights

Hill and Markes, Inc., Hill and Markes, Inc. logo, and other marks, logos, graphics, and trade dress used on the Site are Hill and Markes, Inc.'s trademarks or the trademarks of third-party affiliates, and may not be used in any manner (including in meta-tags or hidden text) without our prior written approval. All content included on the Site, such as text, graphics, images, audio clips, video, data, music, software, and other Materials, is owned or licensed property of Hill and Markes, Inc. or its suppliers, merchants, or licensors and is protected by copyright or other proprietary rights. Any unauthorized use of these Materials may violate trademark, copyright, patent, or other laws. You agree not to modify, reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any such Materials except as expressly permitted in the Agreement.

Notices and Electronic Communications

Except as explicitly stated otherwise, any notices you send to Hill and Markes, Inc. shall be sent by email and regular mail at the addresses listed in the paragraph immediately below. In the case of notices Hill and Markes, Inc. sends to you, you consent to receive notices and other communications by Hill and Markes, Inc. posting notices on the Site or sending you an email at the email address listed in your profile in your account. You agree that all agreements, notices, disclosures, and other communications that Hill and Markes, Inc. provides to you in accordance with the prior sentence satisfy any legal requirement that such communications be in writing. You agree that a printed version of this Agreement and/or any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Notice

Please note the following: (a) Hill and Markes, Inc. is located at 1997 State Highway 5S, Amsterdam, New York, 12010; (b) the fees charged for Hill and Markes, Inc. products and/or services vary depending on the services selected by you; and (c) if you have a question or complaint regarding this Site or Hill and Markes, Inc.'s products or services, please send an email to info@hillmarkes.com. You may also contact us by writing to the address above, or by calling us at 800-836-4455. In accordance with California Civil Code 1789.3, 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, California 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

Dispute Resolution

WITHOUT LIMITING THE EFFECT OF ANY DISCLAIMER CONTAINED HEREIN, ANY CAUSE OF ACTION YOU MAY HAVE WITH RESPECT TO YOUR USE OF THE SITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CLAIM OR CAUSE OF ACTION ARISES.

This Agreement shall be governed and interpreted in accordance with the substantive law of the state of New York without regard to its conflict of law provisions. The parties agree that, to the maximum extent enforceable under applicable law, any litigation regarding use of the Site and these Terms of Use shall be brought in the state or federal courts in New York. The Terms of Use has been written in the English language, and you agree that this English language version will govern your use of the Site, dispute proceedings, and other matters described in the Terms of Use.

Force Majeure

Hill and Markes, Inc. shall be excused from performance under the Agreement to the extent that performance is prevented, delayed, or obstructed by causes beyond our reasonable control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, or natural disasters.

Assignment

You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Hill and Markes, Inc.. Notwithstanding the foregoing, Hill and Markes, Inc. may freely assign Agreement, and the rights and obligations therein, without your consent, including but not limited to, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

Entire Agreement

This Agreement, including the documents incorporated herein by reference, is the entire understanding and agreement between Hill and Markes, Inc. and you with respect to the subject matter hereof.

Miscellaneous

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. In the event that any provision of this Agreement is found to be invalid or unenforceable, this Agreement shall be construed in accordance with its terms as if the invalid or unenforceable provision was not contained therein. No delay or failure by Hill and Markes, Inc. to enforce any provision of this Agreement shall be a waiver of any of our rights under this Agreement. Hill and Markes, Inc. may assign this Agreement, and its rights and duties thereunder, to any party at any time without notice to you. You may not assign this Agreement or rights and duties thereunder without the prior consent of Hill and Markes, Inc..

Digital Millennium Copyright Act Notice Policy

We respect the intellectual property rights of others, and ask you to do the same. If you believe that your work has been posted on the Site in a way that constitutes copyright infringement, please contact us at the address below and provide the following information: (a) the identity of the copyrighted work that you claim has been infringed, or, if multiple copyrighted works are covered by the notice, a representative list of the copyrighted

works that you claim have been infringed via the Site; (b) identification of the material that you claim is infringing (including sufficient information so that we may locate the material on the Site, such as the URL where such material may be found on the Site); (c) your street or mailing address, telephone number, and, if available, email address; (d) the following affirmation (if true): "I hereby state that I have a good faith belief that the disputed use of the copyrighted material is not authorized by the copyright owner, its agent, or the law (e.g., fair use)."; (e) the following affirmation (if true): "I hereby state that the above information in this Notice is accurate and, under penalty of perjury, that I am the copyright owner, or authorized to act on behalf of the owner of the copyright or of the exclusive right under the copyright allegedly infringed."; (f) electronic or physical signature of the copyright owner or of a person authorized to act on behalf of the owner of the copyright or of any exclusive right under the copyright.

Company's designated agent for notice of copyright infringement can be reached at:

Jason Packer, Vice President of Operations

Hill and Markes, Inc.

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