

# TERMS OF USE

Effective Date: February 7, 2019.

**To download and/or print these Terms of Use (these "Terms"), click**

## Introduction

Please read these Terms carefully before using our websites and any online services, software or apps provided by Zekelman Industries, Inc. d/b/a/ Zekelman Group, Wheatland Tube, Atlas Tube, Sharon Tube, Picoma, Western Tube, Z Modular, and Hayes Modular (collectively, "Zekelman Industries", "we", or "us" or "our") that post a link to these Terms (the "Service"). By visiting or otherwise using the Service in any manner, you agree to the then posted Terms and any applicable Additional Terms (defined below), to be bound by them, and that you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#).

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Service, are legally binding, limit Zekelman Industries' liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Service.**

## Additional Terms

In some instances, additional or different terms, posted on the Service, apply to your use of certain parts of the Service (individually and collectively "Additional Terms"). To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless the Additional Terms expressly state otherwise.

## Updates to these Terms and Additional Terms

We may prospectively change these Terms and Additional Terms by posting new or changed terms on the Service as more fully explained [here](#)

## Quick Links

**We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.**

## Grants and Limitations of Rights

- We only grant you a limited revocable license to use the Service subject to rules and limitations. [More](#)

- You grant us a broad license to the content you submit. You retain ownership of and responsibility for your content. We have the right to manage our Service to keep its content appropriate. [More](#)
- Your use of our Service is subject to various restrictions designed to protect the Service and users. [More](#)

### Limitations on Your Remedies

As permitted by applicable law,

- We also disclaim most warranties and provide the Service "As Is". [More](#)
- Our liability is greatly limited. [More](#)
- Your equitable or injunctive relief rights are limited. [More](#)

### Dispute Resolution

- As permitted by law, you agree to arbitrate disputes and waive jury trial and class actions. [More](#)

### Availability of Service

- We may change or discontinue our Service, or your right to access it, in whole or in part. [More](#) Our Service is intended for access from and use in the U.S.A. [and Canada] [More](#)

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#### 1. Ownership and your rights to use the service and content.

**A. Ownership.** The Service and all of its content ("Content"), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein ("Intellectual Property"), are owned or controlled by Zekelman Industries, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Service is the property of Zekelman Industries, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other Intellectual Property and unfair competition rights and laws to the fullest extent possible. **Zekelman Industries** owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Service.

#### B. Your Rights to Use the Service and Content.

**(i)** Your right to use the Service and Content is subject to your strict compliance with these Terms and the Additional Terms. Your right to access and use the Service and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Service and the Content is personal to you, you may not assign nor transfer your right any attempt to do so is void. You may use the Service and the Content solely for your lawful internal business purposes with respect to the purchase of goods and services from Zekelman Industries.

- 1. C. Rights of Others.** In using the Service, you must respect the Intellectual Property and rights of others and Zekelman Industries. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Service, see [Section 5](#) below.

**D. Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Service and Content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. all rights not expressly granted to you are reserved by zekelman industries and its licensors and other third parties. *Any unauthorized use of any Content or the Service for any purpose is prohibited.*

- 1. E. Third-Party Services.** We are not responsible for third parties or their content, advertisement(s), apps or sites ("**Third-Party Services**"). For instance, portions of the Service may be integrated into or linked to third-party sites, platforms and apps that we do not control. Similarly, we may make ads and third-party content or services, which we also may not control, available to you on or via our Service. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for Third-Party Services whether or not integrated into, linked to or otherwise available on or via our Services.

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## 2. Content You Submit.

### A. User-Generated Content.

**(i) General.** Zekelman Industries may now, or in the future, offer users of the Service the opportunity to post, upload, display, publish, or otherwise make available on or submit through the Service, or on or in response to our pages or posts on any third-party platforms or in connection with any of our promotions by any media or manner, or otherwise submit to us (e.g., on our Facebook or other social media pages, in response to our tweets, through a sweepstakes or contest, or by otherwise sending it to us) (collectively, "submit") messages, text, illustrations, files, images, comments, responses, content, ratings, reviews, questions,

suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding any of Zekelman Industries' Content and Intellectual Property included therein, "User-Generated Content" or "UGC"). You may submit UGC through your profile, posting tools, contact us tools, email, and other communications functionality. Except to the extent of the rights and license you grant in these Terms and, subject to any applicable Additional Terms, you retain whatever legally cognizable right, title, and interest that you have in your UGC.

**(ii) Non-Confidentiality of Your User-Generated Content.** Except as otherwise described in the Service's posted [Privacy Policy](#), or any applicable Additional Terms, you agree that (a) your UGC will be treated as non-confidential and non-proprietary by us &ndash regardless of whether you mark them "confidential," "proprietary," or the like &ndash and will not be returned, and (b) to the maximum extent not prohibited by applicable law, Zekelman Industries does not assume any obligation of any kind to you or any third-party with respect to your UGC. Upon request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms. You acknowledge that the Internet and mobile communications may be insecure and subject to breaches of security accordingly, you acknowledge and agree that your UGC is submitted at your own risk.

In your communications with Zekelman Industries, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs (collectively, "Unsolicited Ideas and Materials"). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to us as set forth below. In addition, Zekelman Industries retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. Zekelman Industries' receipt of your Unsolicited Ideas and Materials is not an admission by Zekelman Industries of their novelty, priority, or originality, and it does not impair Zekelman Industries' right to contest existing or future Intellectual Property rights relating to your Unsolicited Ideas and Materials.

**(iii) License to Zekelman Industries of Your UGC.** Except as otherwise described in any applicable Additional Terms (such as a promotion's official rules), which specifically govern the submission of your UGC, or in our [Privacy Policy](#), you hereby grant Zekelman Industries, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your UGC (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. You understand that in exercising such rights, metadata, notices and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary

authority to do so. In order to further effect the rights and license that you grant to Zekelman Industries to your UGC, you also, as permitted by applicable law, hereby grant to Zekelman Industries, and agree to grant to Zekelman Industries, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any UGC, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any UGC, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this [Section 2.A\(iii\)](#) .

**(iv) Zekelman Industries' Exclusive Right to Manage Our Service.** Zekelman Industries may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and Zekelman Industries may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third-party in connection with our operation of UGC venues in an appropriate manner, such as to enhance accessibility of UGC, address copyright infringement and protect users from harmful UGC. Without limitation, we may, but do not commit to, do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms. Such UGC submitted by you or others need not be maintained on the Service by us for any period of time, and you will not have the right, once submitted, to access, archive, maintain, change, remove, or otherwise use such UGC on the Service or elsewhere.

**(v) Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside, and that, as to that UGC, (a) you are the sole author and owner of the Intellectual Property and other rights to the UGC, or you have a lawful right to submit the UGC and grant Zekelman Industries the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any obligation on the part of Zekelman Industries to obtain consent of any third-party and without creating any obligation or liability of Zekelman Industries (b) the UGC is accurate (c) the UGC does not and, as to Zekelman Industries' permitted uses and exploitation set forth in these Terms, will not infringe any Intellectual Property or other right of any third-party and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.

**(vi) Enforcement.** Zekelman Industries has no obligation to monitor or enforce your Intellectual Property rights to your UGC, but you grant us the right to protect and enforce our rights to your UGC, including initiating actions in your name and on your behalf (at Zekelman Industries' cost and expense, to which you hereby consent and irrevocably appoint Zekelman

Industries as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

**B. Appropriate Content and Alerting Us of Violations.** We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. If you discover any content that violates these Terms or any applicable Additional Terms, then you may report it [here](#) For alleged infringements of Intellectual Property rights, see [Section 5](#).

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### 3. Service and content USE RESTRICTIONS.

**A. Service Use Restrictions.** You agree that you will not: (i) use the Service in any manner other than for your internal business purposes with respect to the purchase of goods and services from Zekelman Industries (ii) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Service by any means whatsoever or modify any Service source or object code or any software or other products, services, or processes accessible through any portion of the Service (iii) engage in any activity that interferes with a user's access to the Service or the proper operation of the Service, or otherwise causes harm to the Service, Zekelman Industries, or other users of the Service (iv) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other content protection or access control measure) of the Service or any feature that restricts or enforces limitations on use of or access to the Service, the Content, or the UGC (v) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Service, including email addresses, without the express consent of such users) (vi) attempt to gain unauthorized access to the Service, other computer systems or networks connected to the Service, through password mining or any other means or (vii) otherwise violate these Terms or any applicable Additional Terms.

**B. Content Use Restrictions.** You also agree that, in using the Service, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser) on the Service by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind (ii) will not frame or utilize framing techniques to enclose any such Content (including any images, text, or page layout) (iii) will keep intact all trademark, copyright, and other Intellectual Property and other notices contained in such Content (iv) will not use such Content in a manner that suggests an unauthorized association with any of our or our licensors' products, services, or brands (v) will not make any modifications to such Content (other than to the extent of your specifically permitted use of the Service, if applicable) (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or

transfer to any third-party or on any third-party application or website, or otherwise use or exploit such Content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of Zekelman Industries or, in the case of content from a licensor, the owner of the content and (vii) will not insert any code or product to manipulate such Content in any way that adversely affects any user experience or the Service.

**C. Availability of Service and Content.** Zekelman Industries, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Service and/or Content (and any elements and features of them), in whole or in part, for any reason, and without advance notice or liability.

#### **4. CREATING AN Account.**

**A.** If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials and for restricting access to your account and for all activity under your account. Usernames and passwords must be personal and unique, not violate the rights of any person or entity, and not be offensive. We may reject the use of any password, username, or email address for any reason in our sole discretion. You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us as provided in Section 6 of any unauthorized use of your account, password, or username, or any other breach of security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your account or any account rights.

**B.** Accounts may only be set up by an authorized representative of the party that is the subject of the account. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Service. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice.

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#### **5. Procedure For Alleging Copyright Infringement.**

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act ("DMCA") to identify content or material posted on the Service that is infringing that you would like removed from our Service, you may submit such notice to us in writing that includes all of the following:

(i) a legend or subject line that says: "DMCA Copyright Infringement Notice"

(ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works

(iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the full URL of the page(s) on the Service on which the material appears)

(iv) your full name, address, telephone number, and email address

(v) a statement by you that you have 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

(vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed) and

(vii) your electronic or physical signature.

Zekelman Industries will only respond to DMCA Notices that it receives by mail or email at the addresses below:

By Mail: 227 West Monroe Street, Suite 2600, Chicago, IL 60606 (Attention: Legal Department)

By Email: [Legal@zekelman.com](mailto:Legal@zekelman.com)

For more information call: 800-895-7899

It is often difficult to determine if your copyright has been infringed. Zekelman Industries may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and Zekelman Industries may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work.

## **6. Notices, Questions and CUSTOMER Service.**

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: 227 West Monroe Street, Suite 2600, Chicago, IL 60606 (Attention: Legal Department). If you have a question regarding the Service, you may contact Zekelman Industries by sending an email to [Legal@zekelman.com](mailto:Legal@zekelman.com) or calling us at 800-895-7899. You



acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive the Terms or applicable Additional Terms.

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## 7. Product Specifications Pricing Typographical Errors.

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We strive to accurately describe our products or services offered on the Service however, we do not warrant that such specifications, pricing, or other content on the Service is complete, accurate, reliable, current, or error-free. As permitted by applicable law, Zekelman Industries shall have the right to refuse or cancel any orders in its sole discretion. Your orders are offers to purchase subject to our acceptance, which we may reject or cancel subject to refund. The Additional Terms shall apply to all orders.

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## 8. Arbitration And Dispute Terms

**A. Forum Selection/Jurisdiction.** Jurisdiction and venue for any controversy, allegation, or claim arising out of or relating to the Service, the Content, your UGC, these Terms, or any applicable Additional Terms (collectively, "Dispute") shall be in Chicago, Illinois. Each party submits to personal jurisdiction and venue in Chicago, Illinois for any and all purposes.

**B. Pre-Arbitration Notification.** Zekelman Industries and you agree that it would be advantageous to discuss and hopefully resolve any Disputes before formal proceedings are initiated provided, however, that Zekelman Industries need not do so in circumstances where its claims of Intellectual Property rights are concerned ("IP Disputes," with all other disputes referred to as "General Disputes"). The party making a claim &ndash; whether you or Zekelman Industries &ndash; shall send a letter to the other side briefly summarizing the claim and the request for relief. If Zekelman Industries is making a claim, the letter may be sent, via email, to the email address listed in your Zekelman Industries account, if applicable. If no such information exists or if such information is not current, then we have no notification or delay obligations under this Section 8.B. If you are making a claim, the letter shall be sent to 227 West Monroe Street, Suite 2600, Chicago, IL 60606 (Attention: Legal Department). If the Dispute is not resolved within sixty (60) days after notification, the claimant may proceed to initiate proceedings as set forth in this Section 8. Either you or Zekelman Industries, however, may seek provisional remedies (such as preliminary injunctive relief, subject to Section 8.D) before the expiration of this sixty (60)-day period.

**C. Arbitration of Claims.** All actions or proceedings arising in connection with, touching upon or relating to any Dispute, or the scope of the provisions of this Section, shall be submitted to JAMS ([www.jamsadr.com](http://www.jamsadr.com)) for final and binding arbitration under its

Comprehensive Arbitration Rules and Procedures if the matter in dispute is over \$250,000 or under its Streamlined Arbitration Rules and Procedures if the matter in dispute is \$250,000 or less, to be held in Chicago, Illinois, before a single arbitrator. If the matter in dispute is between Zekelman Industries and a consumer, the matter shall be submitted to JAMS in accordance with its Policy on Consumer Arbitration Pursuant to Pre-Dispute Clauses Minimum Standards of Procedural Fairness. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by JAMS. We may have the right to pay the JAMS fees if required for arbitration to be enforceable. The arbitration shall be a confidential proceeding, closed to the general public provided, however, that a party may disclose information relating to the arbitration proceedings to its and its affiliates' lawyers, insurance providers, auditors and other professional advisers. The fact that there is a dispute between the parties that is the subject of arbitration shall be confidential to the same extent. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator's award is based. Neither party shall be entitled or permitted to commence or maintain any action in a court of law with respect to any matter in dispute until such matter shall have been submitted to arbitration as herein provided and then only for the enforcement of the arbitrator's award provided, however, that prior to the appointment of the arbitrator or for remedies beyond the jurisdiction of an arbitrator, at any time, either party may seek pendente lite relief (subject to the provisions of these Terms waiving or limiting that relief) in a court of competent jurisdiction in Chicago, Illinois or, if sought by Zekelman Industries, such other court that may have jurisdiction over you, without thereby waiving its right to arbitration of the dispute or controversy under this Section provided further, however, that the losing party shall have fifteen (15) business days after the issuance of the arbitrator's decision to fully comply with such decision, after which the prevailing party may enforce such decision by a petition to the Circuit Court of Cook County, Illinois or, in the case of you, such other court having jurisdiction over you, which may be made ex parte, for confirmation and enforcement of the award.

**D. Limitation on Injunctive Relief.** As permitted by applicable law, if you claim that you have incurred any loss, damages, or injuries in connection with your use of the service, then the losses, damages, and injuries will not be deemed irreparable or sufficient to entitle you to an injunction or to other equitable relief of any kind. this means (without limitation) that, in connection with your claim, you agree that you will not seek, and that you will not be permitted to obtain, any court or other action that may interfere with or prevent the development or exploitation of any website, application, content, ugc, product, service, or intellectual property owned, licensed, used, or controlled by any zekelman industries party (defined below) (including your licensed ugc) or a licensor of any zekelman industries party.

**E. Governing Law.** These Terms and any applicable Additional Terms, General Disputes and IP Disputes, and any other claim brought by you against Zekelman Industries or by Zekelman Industries against you pursuant to this Section 8, or otherwise related to the Service, Content, UGC or other Zekelman Industries products or services, will be governed by, construed, and resolved in accordance with, the laws of the State of Illinois, U.S.A., without

regard to its conflicts of law provisions that might apply the laws of another jurisdiction. This Section 8 shall be governed solely by the Federal Arbitration Act, 9 U.S.C. 1, et seq., and not by the law of any state, and is enforceable pursuant to its terms on a self-executing basis. You and Zekelman Industries agree that we intend that this Section 8 satisfies the "writing" requirement of the Federal Arbitration Act. This Section 8 can only be amended by mutual agreement. Either party may seek enforcement of this Section 8 in any court of competent jurisdiction. The arbitrator shall determine any and all challenges to the arbitrability of a claim.

**F. Class Action Waiver.** As permitted by applicable law, both you and Zekelman Industries waive the right to bring any Dispute as a class, consolidated, representative, collective, or private attorney general action, or to participate in a class, consolidated, representative, collective, or private attorney general action regarding any Dispute brought by anyone else. Notwithstanding any provision in the JAMS Comprehensive Arbitration Rules and Procedures to the contrary, the arbitrator shall not have the authority or any jurisdiction to hear the arbitration as a class, consolidated, representative, or private attorney general action or to consolidate, join, or otherwise combine the Disputes of different persons into one proceeding. Notwithstanding the arbitration provision set forth above, if the provision regarding waiver of class, collective, representative, and private attorney general claims of this Section 8 is found to be void or otherwise unenforceable, any such class, collective, representative, or private attorney general claims must be heard and determined through an appropriate court proceeding, and not in arbitration.

**G. Jury waiver.** as permitted by applicable law, the parties hereby waive their right to jury trial with respect to all claims and issues arising under, in connection with, touching upon or relating to these terms, the breach thereof and/or the scope of the provisions of this section, whether sounding in contract or tort, and including any claim for fraudulent inducement thereof.

**H. Small Claims Matters.** Notwithstanding the foregoing, either of us may bring qualifying claim of General Dispute (but not IP Disputes) in small claims court, subject to Section 8.F.

**I.** The provisions of this Section 8 shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 8 shall remain in full force and effect notwithstanding any termination of your use of the Service or these Terms.

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## **9.Disclaimer of Representations and Warranties.**

**A.** As permitted by applicable law, your access to and use of the service is at your sole risk and the service is provided on an "as is", "as available", and "with all faults" basis. To the fullest extent permissible by applicable law, Zekelman Industries and their direct and indirect parents, subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers,

successors, and assigns (collectively, "Zekelman Industries Parties") hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, UGC or other Zekelman Industries products or services, except as set forth in subsection C, below.

**B.** Except for any specific warranties provided herein, or in applicable additional terms, or as otherwise required by applicable law, zekelman industries parties hereby further disclaim all warranties, express or implied, including the warranties of merchantability, fitness for a particular purpose, non-infringement or misappropriation of intellectual property rights of third parties, title, custom, trade, quiet enjoyment, system integration and freedom from computer virus.

**C.** Notwithstanding the foregoing, this section does not expand or limit (i) any express, written product warranty or related disclaimers that are provided by zekelman industries parties or their suppliers with regard to a physical product sold by zekelman industries parties to you, or any warranty on a physical product to the extent required by applicable law (ii) zekelman industries parties' liability for personal injury to you caused by zekelman industries parties to the extent not waivable or cannot be limited under applicable law or (iii) any cause of action you may have against zekelman industries parties that is not waivable or cannot be limited under applicable law.

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## 10. **Limitations of Our Liability.**

**A.** As permitted by applicable law, under no circumstances will any zekelman industries parties be responsible or liable for any loss or damages of any kind, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Service, Content, UGC or other Zekelman Industries products or services, except, to the extent not waivable under applicable law, for direct damages for personal injury caused by a physical product manufactured, sold or provided by Zekelman Industries.

**B.** The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if Zekelman Industries Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Service).

**C.** As permitted by applicable law, in no event will zekelman industries parties' total liability to you, for all possible damages, losses, and causes of action in connection with your access to

and use of the service and your rights under these terms, exceed an amount equal to the amount you have paid zekelman industries in connection with the transaction(s) that underlie the claim(s).

**D.** Notwithstanding the foregoing, this section does not expand or limit (i) any express, written product warranty or related disclaimers that are provided by zekelman industries parties or their suppliers with regard to a physical product sold by zekelman industries parties to you, or any warranty on a physical product to the extent required by applicable law (ii) zekelman industries parties' liability for personal injury to you caused by zekelman industries parties to the extent not waivable or cannot be limited under applicable law or (iii) any cause of action you may have against zekelman industries parties that is not waivable or cannot be limited under applicable law.

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## 11. Updates to Terms.

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Service (at least prior to each transaction or submission). each time you sign in to or otherwise use the service you are entering into a new agreement with us on the then applicable terms and conditions and you agree that we may notify you of new terms by posting them on the service (or in any other reasonable manner of notice which we elect), and that your use of the service after such notice constitutes your going forward agreement to the new terms for your new use and transactions. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Service.

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## 12. General Provisions.

**A. Zekelman Industries' Consent or Approval.** As to any provision in these Terms or any applicable Additional Terms that grants Zekelman Industries a right of consent or approval, or permits Zekelman Industries to exercise a right in its "sole discretion," Zekelman Industries may exercise that right in its sole and absolute discretion. No Zekelman Industries consent or approval may be deemed to have been granted by Zekelman Industries without being in writing and signed by an officer of Zekelman Industries.

**B. Indemnity.** As permitted by applicable law, you agree to, and you hereby, defend (if requested by Zekelman Industries), indemnify, and hold Zekelman Industries Parties

harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Zekelman Industries Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC (ii) your use of the Service and your activities in connection with the Service (iii) your breach or alleged breach of these Terms or any applicable Additional Terms (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Service or your activities in connection with the Service (v) information or material transmitted by you or through your account that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity (vi) any misrepresentation made by you and (vii) Zekelman Industries Parties' use of the information that you submit to us (including your UGC) subject to our [Privacy Policy](#) (all of the foregoing, "Claims and Losses"). You will cooperate as fully required by Zekelman Industries Parties in the defense of any Claim and Losses. Notwithstanding the foregoing, Zekelman Industries Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. Zekelman Industries Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Zekelman Industries Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

### **C. Operation of Service Availability of Products and Services International Issues.**

Zekelman Industries controls and operates the Service from the U.S.A. [and Canada], and makes no representation that the Service is appropriate or available for use beyond the U.S.A. [or Canada]. If you use the Service from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

**D. Export Controls.** You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

**E. Severability Interpretation.** If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

**F. Termination Survival.** Upon suspension or termination of your access to the Service, or upon notice from Zekelman Industries, all rights granted to you under these Terms will cease immediately, and you agree that you will immediately discontinue use of the Service. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to Zekelman Industries in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**G. Assignment.** Zekelman Industries may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Zekelman Industries.

**H. Complete Agreement No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Service and supersede any prior agreements, representations, warranties, assurances or discussion related to the Service. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or Zekelman Industries in exercising any rights, powers, or remedies hereunder will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

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