



## ELEVACITY TERMS ("Agreement")

### WEBSITE

#### ACCEPTANCE OF TERMS THROUGH USE

By using this site or by clicking "I agree" to this Agreement, you ("User") signify your agreement to these terms and conditions. If you do not agree to this Agreement please do not use this site and do not click "I agree". Please check this Agreement periodically for changes as the owner of this site ("Company") reserves the right to revise this Agreement. In the event of a change to this Agreement, your continued use of this site following the posting of any changes constitutes acceptance of such changes. The Company reserves the right to terminate a User's use of this site at any time without notice and may do so for any breach of this Agreement. All credit charges will appear on your statement from ELEVACITY.COM.

#### YOU MUST BE 18 OR OLDER TO AGREE TO THIS AGREEMENT AND USE THIS SITE

This Agreement must be completed, understood and agreed to by a person over 18. If a parent or guardian wishes to permit a person under 18 to access this site, he or she should email the Company with his or her explicit permission and acceptance of full legal responsibility. If you are not yet 18 or are accessing this site from any country where this material is prohibited, please exit now as you do not have proper authorization.

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**Security:** You agree that if you are issued a Username and Password by the Company, you shall use your best efforts to prevent access to this site through your Username and Password by anyone other than yourself, including but not limited to, keeping such information strictly confidential, notifying the Company immediately if you discover loss or access to such information by an unauthorized party and by using a secure Username and Password not easily guessed by a third party. You agree that you shall not try to reverse assemble, reverse compile, decompile, disassemble, translate or otherwise alter any executable code, contents or materials on or received via this site. You understand that such actions are likely to subject you to serious civil and criminal legal penalties and that the Company shall pursue such penalties to the full extent of the law to protect its rights and the rights of its other licensors.

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#### [LINKS TO OTHER WEBSITES](#)

Our Site may contain links to other websites for your information and convenience, or to provide additional shopping for various other goods and services through our Merchant and Services Partners.

These third-party websites are responsible for, and undertake to maintain, their own site terms of use. We suggest that you carefully review the terms of use of each site you choose to access from our Site.

### USER'S LICENCE GRANT TO SITE

Except with regard to personal information, all information which you post on this site or communicate to the Company through this site (collectively "Submissions") shall forever be the property of the Company. The Company shall not treat any submission as confidential and shall not incur any liability as a result of any similarities that may appear in future Company services or products. Without copy, the Company shall have exclusive ownership of all present and future existing rights to any Submission of every kind and nature everywhere. You acknowledge that you are fully responsible for the message, including its legality, reliability, appropriateness, originality and copyright. You hereby represent and warrant that your Submission does not infringe the rights of any third party.

### USER CONDUCT

By using features of this site that allow you to post or otherwise transmit information to or through this site, or which may be seen by other users, you agree that you shall not upload, post, or otherwise distribute or facilitate distribution of any content – including text, communications, video, software, images, sounds, data, or other information – that: A. is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, sexually explicit or graphic, or otherwise in violation of this site's rules or policies; B. infringes any patent, trademark, service mark, trade secret, copyright, moral right, right of publicity, privacy or other proprietary right of any party; C. constitutes unauthorized or unsolicited advertising, junk or bulk email (also known as "spamming"), chain letters, any other form of unauthorized solicitation, or any form of lottery or gambling; D. contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; or E. impersonates any person or entity, including any employee or representative of this site, its licensors or advertisers. You also agree that you shall not harvest or collect information about the users of this site or use such information for the purpose of transmitting or facilitating transmission of unsolicited bulk electronic email or communications for any other commercial purpose of your own or a third party. You further agree that you shall not solicit or collect information, or attempt to induce any physical contact with, anyone 18 years old or younger without appropriate parental consent. This site generally does not pre-screen, monitor, or edit the content posted by users of this site. However, this site and its agents have the right, at their sole discretion, to remove any content that, in this site's sole judgment, does not comply with the Site Submission Rules or is otherwise harmful, objectionable, or inaccurate. This site is not liable for any failure, delay, damages or results, in removing such content. You agree that your use of this site may be suspended or terminated immediately upon receipt of any notice which alleges that you have used this site in violation of these Rules and/or for any purpose that violates any local, state, federal or law of other nations, including but not limited to the

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#### INDEMNIFICATION

You agree to defend, indemnify, and hold harmless the Company, its advertisers, licensors, subsidiaries and other affiliated companies, and their employees, contractors, officers, agents and directors from all liabilities, claims, and expenses, including attorney’s fees, that arise from your use of this site, or any services, information or products from this site, or any violation of this Agreement. The Company reserves the right; at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you shall cooperate with the Company in asserting any available defenses.

#### LEGAL COMPLIANCE

Company may suspend or terminate this Agreement or User’s use immediately upon receipt of any notice which alleges that User has used this site for any purpose that violates any local, state, federal or law of other nations, including but not limited to the posting of information that may violate third party rights, that may defame a third party, that may be obscene or pornographic, that may harass or assault other, that may violate hacking or other criminal regulations of its agent, officers, directors, contractors or employees. In such event, Company may disclose the User’s identity and a subpoena or other legal action,

and Company shall not be liable for damages or results thereof and User agrees not to bring any action or claim against Company for such disclosure.

#### **CHOICE OF LAW AND FORUM**

This site (excluding third party linked sites) is controlled by the Company from its offices within the State of Texas, U.S. of America. It can be accessed from all 50 states as well as from other countries around the world to the extent permitted by site. As each of these places has laws that may differ from Texas, by accessing this site, both you and the Company agree that the statutes and laws of Texas shall apply to any actions or claims arising out of or in relation to this Agreement or your use of this site, without regards to conflicts of laws principles thereof. You and the Company also agree and hereby submit to the filing of any claim only in the exclusive personal jurisdiction and venue of Texas and any legal proceedings shall be conducted in English. The Company makes no representation that materials on this site are appropriate or available for use in other locations and accessing them from territories where their contents are illegal is prohibited.

#### **MISCELLANEOUS**

This Agreement incorporates by reference the Site Submission Rules if this site allows posting and posts such Rules. This Agreement constitutes the entire agreement between the parties related to the subject matter thereof, supersedes any prior or contemporaneous (oral, written or electronic) agreement between the parties and shall not be changed except by written agreement signed by an officer of the Company. If any provision of this Agreement is prohibited by law are held to be unenforceable, the remaining provisions hereof shall not be affected, and this Agreement as much as possible under applicable law shall continue in full force and effect as if such unenforceable provision had never constituted a part hereof and the unenforceable provision shall be automatically amended so as to best accomplish the objectives of such unenforceable provision within the limits of applicable law. This site reserves the right to revise these provisions at its discretion, so check back from time to time to be sure you are complying with the current version.

#### **TERMS OF SALE**

I understand that placing a Smartship order is optional. Should I choose to opt-in to a Smartship order, I understand that I will be billed the monthly fee associated with my order. I also authorize the merchant to store this card for future use. I also understand that I may modify or cancel the order at any time by contacting Customer Service at 1-800-518-0284.

## SMARTSHIP ACKNOWLEDGMENTS

- You understand that placing a Smartship Order is optional.
- In approving the set-up of your automatic order – you are agreeing to the rules of Elevacity's Smartship program, and Elevacity's Shipping and Return Policy.
- Should you choose to opt-in to the Smartship Program, you agree and approve the credit card on your Profile is the method of payment to be used for this Smartship.
- Should you choose to opt-in to the Smartship Program, you agree and instruct Elevacity to ship this Smartship order to the Shipping Address on your Profile.
- You understand that you may change the items in your order, or cancel the Smartship order at any time, up until 3 days prior to the scheduled ship date of your Smartship by calling Customer Service at 1-800-518-0284.
- You acknowledge that your Smartship order last ship date available is the 28th of each month.
- You acknowledge the cancellation of automatic orders due to declined, disputed or returned payments may subject you to additional fees and penalties.
- Smartship charges will appear on your credit card statement as a charge from “Elevacity”.