

# Terms and Conditions of Use

PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY. BY ACCESSING OR USING OUR SERVICE YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. DO NOT USE OUR SERVICES IF YOU DO NOT AGREE TO ALL OF THESE TERMS.

These Terms and Conditions of Use (“Terms”) apply exclusively to Your access to and use of the website (the “Site”) and app (the “App”) operated by The Avo Shopping Company dba in New York as The Avo Shopping Company (NY) Inc (collectively, the “Services”).

*Effective date March 31st, 2020 (updated, January 11, 2023)*

## 1. USE OF THE SITE AND APP

1.1 By accessing or using our Site or App, You agree to these Terms. If You do not agree to these Terms, You may not access or use the Site or App. AVO reserves the right to change or modify these Terms at any time and in our sole discretion. If AVO makes changes to these Terms, we will provide You with notice of such changes by updating the effective date at the top of these Terms. Your continued use of the Site or App will confirm Your acceptance of the revised Terms. We encourage You to frequently review the Terms to ensure You understand the terms and conditions that apply to Your use of the Site or App. If You do not agree to the amended Terms, You must stop using the Site or App. Any use of the Site or App in violation of these Terms may result in, among other things, suspension or termination of Your account.

1.2 If You have any questions regarding the use of the Site or App, please refer to our FAQ on [www.avonow.com](http://www.avonow.com). All other questions or comments about the Site, App, or their contents may be directed to customer service by calling 1 (844) 213-8903 or by email: [support@avonow.com](mailto:support@avonow.com).

## 2. PRIVACY POLICY

Please refer to our [Privacy Policy](#) for information on how AVO collects, uses, and shares information about the users of the Site or App.

## 3. ELIGIBILITY, REGISTRATION, AND ACCOUNTS

3.1 The Site and App are not targeted towards, nor intended for use by, anyone under the age of 18. By using the Site or App, You represent and warrant that You are 18 years of age or older. If You are not at least 18 years of age, do not access, use, or register for an account on the Site or App. In addition, You may not make a purchase from our Site or App unless You are at least 18 years of age. You also represent and warrant that You (a) have not previously been suspended or removed from the Site or App; (b) do not have more than one Site or App account; and (c) that You have full power and authority to agree to the Terms and in doing so will not violate any other agreement to which You are a party.

3.2 In order to use some features of the Site and App, You will need to register for an account and provide information about Yourself, including Your full name, address, phone number, company or credit card information for purchases, and email address and You must select a password. You agree to (a) provide accurate, current and complete information; (b) maintain and promptly update Your account information; (c) maintain the security of Your account credentials; (d) not share Your account credentials

with others; and (e) promptly notify AVO if You discover or otherwise suspect any security breaches related to the Site or App. You are solely responsible for the use of Your account credentials and for all charges incurred when using Your account. We reserve the right to suspend or terminate Your account at any time, with or without notice to You.

#### **4. OWNERSHIP, LICENSE AND RESTRICTIONS ON USE**

4.1 AVO provides all information on the Site and App (together with all content and the underlying source HTML files that implement the hypertext features) exclusively under these Terms and all applicable laws. Unless otherwise indicated, all right, title and interest (including all copyrights, trademarks and other intellectual property rights) in the Site and App belong to AVO, its licensors, or suppliers. In addition, the names, images, pictures, logos and icons identifying AVO's products and services are proprietary or licensed marks of AVO, its licensors, or suppliers. Except as expressly provided below, nothing contained herein shall be construed as conferring any license or right, by implication, estoppels or otherwise, under copyright, trademark or other intellectual property rights.

4.2 You are hereby granted a personal non-exclusive, non-transferable, limited license to view the Site and App, and to download and/or print insignificant portions of materials retrieved from the Site and App provided (a) it is used only for informational, non-commercial purposes, and (b) You do not remove or obscure the copyright notice or other notices. Except as expressly provided above, no part of the Site and App, including but not limited to materials retrieved therefrom or the underlying code, may be reproduced, republished, reverse-engineered, copied, uploaded, downloaded, displayed, modified, licensed, transmitted, or distributed in any form or by any means or for any commercial purpose, without the express written permission of AVO. Nothing herein transfers any right or license to the underlying code of any of the Site and App.

4.3 By submitting User Content (as defined below), You automatically grant AVO a world-wide, royalty-free, perpetual, irrevocable, non-exclusive, fully sublicensable and transferable, right and license to use, record, sell, lease, reproduce, distribute, create derivative works from, publicly display or perform, transmit, publish, and otherwise exploit the User Content, in whole or part as AVO deems appropriate including, but not limited to, in connection with AVO or its subsidiaries' or affiliates' businesses, and all in accordance with AVO's [Privacy Policy](#).

4.4 The Site and App may be used only for lawful purposes by individuals using authorized services of AVO. You are responsible for Your own communications, including the upload, transmission and posting of information, and are responsible for the consequences of their posting on or through the Site and App. AVO specifically prohibits any use of the Site and App, and requires all users to agree not to use the Site and App for any of the following:

- Posting any information which is incomplete, false, inaccurate or not Your own;
- Impersonating another person;
- Constituting, engaging in or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any city, state, national or international law or regulation or which fails to comply with accepted Internet protocol;
- Posting material that is copyrighted or otherwise owned by a third-party unless You are the copyright owner or have the permission of the owner to post it;
- Posting material that reveals trade secrets, unless You own them or have the permission of the owner;

Posting material that infringes on any other intellectual property, privacy or publicity right of another;

Transmitting or transferring (by any means) information or software derived from the Site and App to foreign countries or certain foreign nations in violation of US export control laws; or

Attempting to interfere in any way with the Site or App or AVO's networks or network security, or attempting to use the Site's or App's service to gain unauthorized access to any other computer system.

4.5 Violations of system or network security may result in civil or criminal liability. AVO will investigate occurrences and may involve, and cooperate with, law enforcement authorities in prosecuting the user or users who are involved in such violations. You are prohibited from violating or attempting to violate the security of the Site or App, including, without limitation, the following:

Gaining access to data not intended for such user or logging into a server or account which user is not authorized to access;

Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper authorization;

Attempting to interfere with service to any user, host or network, including, without limitation, via means of submitting a virus to the Site or App, overloading, "flooding", "mailbombing" or "crashing";

Sending unsolicited e-mail, including promotions and/or advertising of products or services, forging any TCP/IP packet header or any part of the header information in any e-mail or newsgroup posting.

## **5. LINKS TO THIRD PARTY SITE**

AVO may provide links to third-party websites for Your convenience ("Third-Party Sites"). AVO does not assume any responsibility for the (i) content of, (ii) technology implemented by, or (iii) privacy practices of these Third-Party Sites and all use is at Your own risk. You should review the privacy policy and terms of use for each Third-Party Sites and confirm they are acceptable prior to registration on or use of the site. Links to Third-Party Sites do not imply endorsement of the Third-Party Sites by AVO. IN NO EVENT SHALL AVO BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANYONE FOR ANY LOSS OR DAMAGE ARISING FROM OR OCCASIONED BY THE USE OF THE LINKED THIRD-PARTY SITES OR THE INFORMATION OR MATERIAL ACCESSED THROUGH SUCH THIRD-PARTY SITES INCLUDING, WITHOUT LIMITATION, ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, ATTORNEYS' FEES AND LOST PROFITS OR SAVINGS. All in accordance with AVO's [Privacy Policy](#).

## **6. LINKS TO AVO WEB PAGES**

6.1 AVO permits links to the Site and App provided (a) You do not remove or obscure, by framing or otherwise, any content, including but not limited to the copyright notice and other notices, (b) You do not directly or indirectly cause any portion of the Site and App to appear on a user's computer screen with any material (e.g. URL, text, graphics, pop-up window, audio or other) supplied by or associated with You or a third party, (c) You give AVO notice of all such links by sending an e-mail to support@avonow.com, and (d) You discontinue providing links to the Site and App if notified by AVO.

6.2 When linking to the Site and App You may use one or more AVO logos as a link anchor. These logos are trademarks of AVO and AVO retains all rights in them. AVO grants You a limited license to use these logos solely for linking to AVO web pages as provided above or for disseminating internal company marketing materials notifying employees of the Site or App. Logos cannot be altered or modified other than to make them larger or smaller. Except for the limited license provided above, AVO does not grant, by implication, estoppels or otherwise, any license to use any trademark, copyrighted materials or other proprietary materials displayed on the Site and App and any other use is strictly prohibited.

## **7. CONSENT TO SESSION RECORDING**

Avo may record all or part of your interaction with our Site through our session recording software, which captures the actions of people using our Site through your mouse movements, clicks, taps, types, scrolling or navigating across our Site (“**Recordings**”). Such Recordings are used for quality assurance purposes, to better deliver to you our services, and to help Avo improve the Site. Avo will keep such Recordings confidential, and we will not publicly display such Recordings unless legally required to do so, such as if subject to a court order. By accessing and using the Site, you agree and consent to such Recordings for the purposes and uses set forth in these Terms of Use and as otherwise set forth in the Privacy Policy found at AVO’s [Privacy Policy](#).

## **8. TEXTING TERMS AND CONDITIONS**

You may opt in to receive Avo’s text messages at the mobile number you provide to us. Your consent to receive our promotional texts is not a condition of purchase or use of services. Message and data rates may apply. If you have any questions about your text plan or data plan, please contact your wireless provider. You can opt out of receiving our texts by following the instructions provided in those messages or otherwise reply to our texts with the “STOP” command. If you have any questions, you may reply “HELP” to any text from Avo or contact us by texting “HELP” to 1 (844) 213-8903 or by email: support@avonow.com. . We may confirm your opt out by text message. If you subscribe to multiple types of text messages from us, we may unsubscribe you from the service that most recently sent you a message or respond to your STOP message by texting you a request to identify services you wish to stop. Please note, that by withdrawing your consent, some Site and App features and certain Services may no longer be available to you. Keep in mind that if you stop receiving text messages from us you may not receive important and helpful information and reminders about your services.

## **9. CAN-SPAM ACT AND TELEPHONE CONSUMER PROTECTION ACT COMPLIANCE**

Avo is committed to being compliant with the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM ACT”) and the Telephone Consumer Protection Act (“TCPA”). You consent to receive text messages from us as set forth in Section 8, above (Texting Terms and Conditions). Emails, newsletters, and text messages received from us are intended to fully comply with the CAN-SPAM ACT and the TCPA. In the event you receive an email or text message from us which you do not believe is fully compliant with the CAN-SPAM ACT or the TCPA, please contact us immediately at [support@avonow.com](mailto:support@avonow.com).

# **Delivery Terms and Conditions of Sale (Non-Alcoholic Products)**

*Effective date March 31st, 2020 (updated, January 11, 2023)*

## **10. NON-ALCOHOLIC PRODUCTS**

Please read this document carefully! This Delivery Terms and Conditions of Sale (Non-Alcoholic Products) governs the sale and delivery of non-alcoholic products only. Please see our Terms and Conditions of Alcohol Purchases section below for those terms and conditions governing the marketing and delivery of alcohol products. It contains very important information about Your rights and obligations, as well as limitations and exclusions that may apply to You ("You," "Your," or "Customer"). Please note, that these Delivery & Sale Terms (defined below) include and incorporate by reference the Terms and Conditions of Use. In the event that any of the terms of this Delivery & Sale Terms conflict with the Terms and Conditions of Use, the terms of this Delivery & Sale Terms shall govern the purchase and delivery of products.

AVO provides recognition platform, in which you can purchase non-alcoholic products to be delivered if certain conditions (set forth below) are met, and offers our customers online ordering of non-alcoholic products sold pursuant to such services (the "Non-Alcoholic Services"). The Delivery Terms and Conditions of Sale (Non-Alcoholic Products) ("Delivery & Sale Terms") set forth in this document govern Your use of the Non-Alcoholic Services. When You use the Non-Alcoholic Services to place an order for non-alcoholic products, You authorize AVO to purchase and deliver those non-alcoholic products from authorized parties with whom AVO has contracted to purchase from ("Authorized Third-Party"). Unless otherwise specified, You acknowledge and agree that AVO is acting as Your agent in handling, shipping and/or delivery of goods purchased by You and is not the seller of the goods to You. You agree that Your purchase is being made from the Authorized Third-Party, and that the Authorized Third-Party is the merchant of record. By placing an order on our Site or App, You agree to be bound by and accept these Delivery & Sale Terms. We may update or change these Delivery & Sale Terms, as well as our Terms and Conditions of Use, Terms and Conditions of Alcohol Purchases, our Generally Applicable Terms and Conditions, and our Privacy Policy from time to time to reflect changes in our business. Visit this page when ordering via the Service to review current Delivery & Sale Terms which are binding on You.

**10.1 OTHER DOCUMENTS** These Delivery & Sale Terms may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for product(s) which is subject to additional or altered terms and conditions will be null and void, unless otherwise agreed to in a written agreement signed by both Customer and AVO.

**10.2 ELIGIBILITY; PAYMENT TERMS; ORDERS; QUOTES; INTEREST** In order to use the Non-Alcoholic Services You are required to register for a digital account on the Site or App. You must be 18 or older to use the Non-Alcoholic Services. Terms of payment are within AVO's sole discretion, and unless otherwise agreed to in writing in advance by AVO, payment must be received by AVO prior to AVO's relaying the order to the Authorized Third-Party (when relevant). At this time, payment for products sold via the Non-Alcoholic Services may be made by valid credit card only (VISA/MASTERCARD/AMERICAN EXPRESS/DISCOVER). AVO may invoice parts of Your order separately. Orders are not binding upon AVO until accepted by the Authorized Third-Party when relevant (meaning Your credit card has been charged by AVO and the Authorized Third-Party has accepted Your order). Prices for products purchased via the Non-Alcoholic Services will be valid for the period stated on the Site and App, as applicable. Customer

agrees to pay interest on all past-due sums at the highest rate allowed by New York law. AVO reserves the right to limit the order quantity on any product and/or to refuse to deliver products to any customer for any reason, or for no reason whatsoever, with or without prior notice.

**10.4 TITLE; RISK OF LOSS** Title to, and risk of loss of, products comprising Your order passes from AVO to Customer upon transfer by AVO of such products to the authorized company representative designated to receive delivery at Your work or building address.

**10.5 PRODUCTS** AVO's merchandising policy for the Non-Alcoholic Services is one of on-going product update and revision. AVO may revise and discontinue products offered pursuant to the Non-Alcoholic Services at any time and AVO is not responsible for typographical errors or misprints. AVO reserves the right to limit order quantity at any time without notice. Prices and promotions offered via the Non-Alcoholic Services are subject to change without notice.

## Terms and Conditions of Alcohol Purchases

### 11. ALCOHOLIC PRODUCTS

By accessing or using our Site, App, and any subdomains of our Site, or using or receiving the Site, and any services supplied to You by AVO for the purchase and delivery of alcohol (collectively, "Alcohol Services"), You represent to us that You are of legal drinking age in the United States and have legal capacity to enter into and agree to these Terms.

THE ALCOHOL SERVICES ARE INTENDED SOLELY FOR USERS WHO ARE 21 YEARS OF AGE OR OLDER, AND ANY REGISTRATION, USE OR ACCESS TO THE ALCOHOL SERVICES BY ANYONE UNDER 21 IS STRICTLY PROHIBITED AND IN VIOLATION OF THESE TERMS.

BY USING THE ALCOHOL SERVICES, YOU EXPRESSLY REPRESENT AND WARRANT THAT YOU ARE AT LEAST 21 YEARS OF AGE.

You acknowledge that these Terms are supported by reasonable and valuable consideration, the receipt and adequacy of which are hereby acknowledged. Without limiting the foregoing, You acknowledge that such consideration includes, without limitation, Your use of the Alcohol Services and receipt or use of data, content, products and/or services through the Alcohol Services.

**11.1 OUR ALCOHOL SERVICES** Our Alcohol Services enable you to receive alcohol purchase suggestions, and schedule orders with AVO's platform. All orders placed through the Site or App are accepted, reviewed, and ultimately fulfilled by independent, licensed alcohol beverage retailers, and other licensees with retail privileges, ("Licensed Retailers") Licensed Retailers. Each product listed on AVO is not an offer to purchase said product but an invitation to make an offer by placing an order. You acknowledge and agree that AVO does not sell, offer to sell, invite to sell, or solicit any offers. In all instances, all sales are advertised, accepted, made and delivered by licensed retailers who receive all orders and offers. In all instances, any solicitation, invitation, offer, advertisement or communication is void where prohibited by law. AVO does not sell, advertise, warehouse, deliver, or otherwise handle alcohol beverages. No part of the Alcohol Services is intended to facilitate any improper furnishing of inducements by any manufacturer, importer, supplier, wholesaler or distributor of alcohol beverages to any Licensed Retailer or any improper exclusionary practices by any alcohol beverage licensee. In all instances, AVO uses its best efforts to strictly comply with the applicable jurisdiction's alcohol licensing regulations.

**11.2 ORDER PROCESS** Once the charge is authorized, the Licensed Retailer will package Your order for delivery by a Licensed Retailer delivery company of its choice. The individual accepting the order delivery must provide a valid form of photo identification proving that he or she is at least 21 years old and sign for the order at the time of receipt of delivery. It is solely the responsibility of each Licensed Retailer, and its employees and agents, or the delivery company used by the Licensed Retailer and that delivery company's employees and agents, to verify such proof of identification. Your order request or delivery may be declined for any reason, including but not limited to Your inability to produce a validly issued photo ID proving You are at least twenty-one (21) years of age, by the Licensed Retailer, or its employee or agent, or the delivery company used by the Licensed Retailer, or that delivery company's employee or agent. If declining because the requested item(s) or acceptable substitutions are not in stock, the Licensed Retailer may offer You a full refund. If Your order request or delivery is declined or cannot be completed for any other reason, You may be charged a non-refundable restocking fee of twenty dollars (\$20.00) ("Restocking Fee"). Without limiting the foregoing, THE RESTOCKING FEE WILL BE AUTOMATICALLY CHARGED TO YOU IF YOU, OR THE ORDER RECIPIENT, IF APPLICABLE, FAILS TO PROVIDE ACCEPTABLE PROOF OF IDENTIFICATION AND AGE, OR IF THE LICENSED RETAILER, OR ITS EMPLOYEE OR AGENT, OR AVO AND ITS EMPLOYEE OR AGENT, OR THE DELIVERY COMPANY USED BY THE LICENSED RETAILER OR THAT DELIVERY COMPANY'S EMPLOYEE OR AGENT, IN ITS SOLE DISCRETION, DETERMINES THAT THE TRANSFER OF POSSESSION OF THE ITEMS IS OTHERWISE ILLEGAL, UNSAFE, OR INAPPROPRIATE.

YOU AGREE THAT YOU MAY NOT PROVIDE AVO OR A LICENSED RETAILER WITH ANY INFORMATION OF, OR USE THE ALCOHOL SERVICES TO PURCHASE OR SEND A DELIVERY TO, ANY INDIVIDUAL UNDER 21 YEARS OF AGE.

Sales by Licensed Retailers are made at their licensed premises and title to, and ownership of, all ordered items pass from the Licensed Retailers to You at their licensed premises and You assume all responsibility for the delivery of Your order. By arranging for the delivery of Your order on Your behalf, the Licensed Retailer is providing a service to You. By using delivery services, You represent that You are of legal drinking age and are in compliance with Your local and state laws applicable to the purchase, transportation, receipt and/or reporting of Your order. You also represent that You have obtained all required permissions, paid all required fees, are working through properly licensed intermediaries where required, are legally entitled to take possession of the order and are legally entitled to take the quantities ordered. You further represent that You are using the Alcohol Services for lawful purposes and to place orders for personal consumption and not for any resale or distribution.

**11.4 COMPANY DESIGNEE** By using the Alcohol Services and this Site or App You expressly authorize the Company Designee to act on your behalf in accepting the alcoholic beverages purchased from the Licensed Retailer. AVO will only perform the Alcohol Services if You, or an authorized company representative on your behalf ("Company Designee") produce a validly issued photo ID proving You or the Company Designee is at least twenty-one (21) years of age. In the event that a Company Designee accepts delivery of the alcohol beverages, you shall indemnify AVO and its directors, officers, employees, shareholders, affiliates, agents, representatives, third-party information providers, delivery agents, merchants, or licensors from any suit, claim, fee, penalty, assessment that is related to or arises out of the Alcohol Services and the Company Designee's acceptance of these services on your behalf.

**11.5 PRICING** The prices published on the Site or App are suggested retail prices based on pricing information provided to us by Licensed Retailers and may not always reflect the prevailing pricing. The Licensed Retailers reserve the right to determine final prices of all their products. The Licensed Retailers

also may establish a required minimum purchase amount before agreeing to accept Your offer to purchase its goods.

**11.6 LICENSE GRANT** AVO hereby grants to You, subject to these Terms, a personal, revocable, nonexclusive, non-transferable, limited license (without the right to sublicense) to access and use the Alcohol Services solely for Your personal use on a mobile or other device that You own or control. These Terms do not permit You to use the Service on a mobile or other device that You do not own or control and You may not distribute or make all or any portion of the Alcohol Services available over a network where it could be used by multiple devices at the same time. All rights not expressly granted herein are reserved by AVO.

**11.7 OBJECTIONABLE MATERIAL** You understand that by using any of the Alcohol Services, You may encounter content that may be deemed offensive, indecent, or objectionable, which content may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to objectionable material. If You object to any part of the Alcohol Services, You should immediately cease using the Alcohol Services.

**11.8 TERMINATION AND MODIFICATIONS TO ALCOHOL SERVICES** AVO reserves the right, in its sole and absolute discretion, to modify, suspend, or discontinue at any time, with or without notice, the Alcohol Services and/or services offered on or through the Site or App (or any part thereof), including but not limited to the Site's or App's features, look and feel, and functional elements and related Alcohol Services.

**11.9 ACCESS TO AVO'S ALCOHOL SERVICES** You acknowledge that from time to time the AVO Alcohol Services or this Site or App may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which AVO may undertake from time to time; or (iii) causes beyond the control of AVO or which are not reasonably foreseeable by AVO.

**11.10 ALCOHOL SERVICES WARRANTY DISCLAIMER; LIMITATION OF LIABILITY; INDEMNIFICATION.**

THE AVO ALCOHOL SERVICES, THE SITE, THE APP, AND ITS CONTENTS PROVIDED IN CONNECTION WITH THE ALCOHOL SERVICES ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. AVO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE WITH RESPECT TO THE ALCOHOL SERVICES, THE SITE, THE APP, OR ITS CONTENTS OR WITH RESPECT TO ANY INFORMATION, SERVICES, AND PRODUCTS PROVIDED THROUGH OR IN CONNECTION WITH THE ALCOHOL SERVICES.

AVO DOES NOT ADOPT ANY REPRESENTATION OR WARRANTY OF ANY MANUFACTURER OR MERCHANT OF ANY SUCH INFORMATION, SERVICE, OR PRODUCTS. AVO MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND AS TO THE AVAILABILITY, ACCURACY, OR CONTENT OF ANY INFORMATION, SERVICES, OR PRODUCTS OBTAINED THROUGH THE SITE OR APP OR THE ALCOHOL SERVICES. AVO DOES NOT WARRANT THAT THE FUNCTIONS PROVIDED BY THE SITE OR APP WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THIS SITE OR APP OR THE SERVER THAT MAKES IT AVAILABLE IS FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

IN CONNECTION WITH ANY WARRANTY, CONTRACT, OR COMMON LAW TORT CLAIMS, AVO AND ITS DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, AFFILIATES, AGENTS, REPRESENTATIVES, THIRD-PARTY INFORMATION PROVIDERS, DELIVERY AGENTS, MERCHANTS, OR LICENSORS (COLLECTIVELY, "AVO PARTIES") (I) SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR

CONSEQUENTIAL DAMAGES, LOST PROFITS, OR DAMAGES RESULTING FROM THE USE OR INABILITY TO ACCESS AND USE THE SITE OR APP, THE ALCOHOL SERVICES, OR THE CONTENT, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SITE OR APP, THE ALCOHOL SERVICES, OR THE CONTENT SHALL BE LIMITED TO THE MONIES YOU HAVE PAID AVO IN CONNECTION WITH YOUR USE OF THE SITE OR APP OR THE ALCOHOL SERVICES DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.

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You agree to defend, indemnify, and hold AVO Parties harmless from any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, fines, penalties, assessments, fees, and expenses, including, but not limited to, attorney's fees and costs, arising out of or in connection with a violation of these Terms and Conditions of Alcohol Purchases by You or through use of Your account or otherwise in connection with Your use of the Alcohol Services.

## **Generally Applicable Terms and Conditions**

These Generally Applicable Terms and Conditions apply to Your use of the Site and App and any of the Non-Alcoholic Services or Alcohol Services provided by AVO, except where expressly stated otherwise herein or where directly contrasted by similar terms and conditions in our Terms and Conditions of Use, Terms and Conditions of Alcohol Purchases, and our Privacy Policy.

### **12. DISCLAIMERS**

12.1 THE SITE AND APP, INCLUDING WITHOUT LIMITATION, ALL CONTENT, FUNCTION, MATERIALS, NON-ALCOHOLIC SERVICES, AND ALCOHOL SERVICES, ARE PROVIDED ON AN "AS IS", "AS AVAILABLE," "WITH ALL FAULTS" BASIS AND AVO EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ANY WARRANTY FOR INFORMATION, DATA, DATA PROCESSING SERVICES OR UNINTERRUPTED ACCESS, AND ANY WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, COMPLETENESS, USEFULNESS, OR CONTENT OF INFORMATION. AVO DOES NOT WARRANT OR REPRESENT THAT ANY MATERIAL ON THE SITE OR APP IS ACCURATE, COMPLETE, CURRENT, RELIABLE, OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. AVO MAKES NO WARRANTY THAT THE SITE OR APP WILL MEET USERS' EXPECTATIONS OR REQUIREMENTS. NO ADVICE, RESULTS OR INFORMATION, OR MATERIALS WHETHER ORAL OR WRITTEN, OBTAINED BY YOU THROUGH THE SITE OR APP SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. IF YOU ARE DISSATISFIED WITH THE SITE OR APP, YOUR SOLE REMEDY IS TO DISCONTINUE USING THE SITE OR APP.

APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OR ALL OF THESE DISCLAIMERS MAY NOT APPLY TO YOU.

12.2 AVO disclaims all responsibility for any loss, injury, claim, liability, or damage of any kind resulting from, arising out of, or in any way related to (a) any errors in or omissions from the Site or App, including but not limited to technical inaccuracies and typographical errors, (b) any Third-Party Sites or content therein directly or indirectly accessed through links in the Site or App, including but not limited to any errors in or omissions therefrom, (c) the unavailability of the Site or App or any portion thereof, (d) Your

use of the Site or App, (e) Your use of any equipment or software in connection with the Site or App, or (f) Your use of the Non-Alcoholic Services or Alcohol Services.

### **13. LIMITATION OF LIABILITY; INDEMNIFICATION; WAIVER**

13.1 TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, A COVERED PARTY (AS DEFINED BELOW) SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND LOST PROFITS OR SAVINGS) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH (I) YOUR ACCESS OR USE OF, OR INABILITY TO ACCESS OR USE, THE SITE OR APP OR AVO'S SERVICES ; (II) ANY TRANSACTION CONDUCTED THROUGH OR FACILITATED BY THE SITE OR APP; (III) ANY CLAIM ATTRIBUTABLE TO ERRORS, OMISSIONS, DEFICIENCIES, OR OTHER INACCURACIES IN THE SITE OR APP; (IV) ANY UNAUTHORIZED ACCESS TO, OR USE, DISCLOSURE OR ALTERATION OF, YOUR TRANSMISSIONS OF DATA INCLUDING, WITHOUT LIMITATION, YOUR PERSONAL INFORMATION OR CARD HOLDER DATA, (V) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE OR APP; OR (VI) ANY OTHER MATTER WHATSOEVER RELATED TO AVO, ANY OF ITS AFFILIATES, THE SITE, THE APP, OR AVO'S SERVICES, INCLUDING, WITHOUT LIMITATION, THEIR CONTENT, REGARDLESS OF ANY NEGLIGENCE OF ANY COVERED PARTY EVEN IF A COVERED PARTY OR ITS REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED THAT ANY DIRECT DAMAGES THAT YOU MAY SUFFER AS A RESULT OF YOUR USE OF THE SITE, THE APP, AVO'S SERVICES, OR THE CONTENT SHALL BE LIMITED TO THE MONIES YOU HAVE PAID AVO IN CONNECTION WITH YOUR USE OF THE SITE OR APP OR AVO'S SERVICES DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. "Covered Party" means The AVO Shopping Company, Inc., its affiliates, and any officer, director, employee, subcontractor, agent, successor, or assign of any of them.

13.2 You agree to defend, indemnify, and hold AVO Parties harmless from any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, fines, penalties, assessments, fees, and expenses, including, but not limited to, attorney's fees and costs, arising out of or in connection with a violation of these Terms by You or through use of Your account or otherwise in connection with Your use of any services provided to You by AVO.

13.3 You hereby confirm and agree that you are not relying on any third party in deciding to use the Site or App and purchase Avo's services and that you will not at any time assert such reliance against any third party, and on behalf of yourself, your family members and any of your invitees You hereby waive, release and forever discharge (to the fullest extent permitted by law) any and all liabilities, direct or indirect claims, suits and demands ("Liabilities"), against any third party which subscribes to or receives Avo's services (including, without limitation, an employer, building owner or building manager) and any of their predecessors, affiliated entities, and any of their respective affiliates, shareholders, officers, directors, employees, agents, insurers, successors and assigns, with respect to any use of the Site or App or Avo's services. Without limiting the foregoing, each time You make a purchase from the Site or App You will be deemed to restate such confirmation and agreement, and to waive, release and forever discharge all Liabilities against all such persons and entities related to or in connection with such purchase and related services.

### **13.4 ENTIRE AGREEMENT; SEVERABILITY**

These Terms and Conditions of Use, Terms and Conditions of Alcohol Purchases, Generally Applicable Terms and Conditions, and our Privacy Policy constitute the entire agreement with respect to Your access to and use of the Site or App. If any provision of these Terms and Conditions is unlawful, void or unenforceable, then that provision shall be deemed severable from the remaining provisions and shall

not affect their validity and enforceability. NOTWITHSTANDING THE FOREGOING, UNDER NO CIRCUMSTANCES DO THE PARTIES AGREE TO CLASS-ARBITRATION. IF A COURT REFUSES TO ENFORCE THE WAIVER OF CLASS-WIDE ARBITRATION, THE ENTIRE ARBITRATION PROVISION SHALL BE UNENFORCEABLE AND ANY CLAIMS BROUGHT ON BEHALF OF A PUTATIVE CLASS WILL PROCEED IN COURT.

### **13.5 COMMUNICATIONS.**

Any communication or other information sent to AVO via electronic mail or otherwise in connection with Your use of the Site or App, including but not limited to suggestions, ideas and comments, will be treated as non-confidential and all such information may be used by AVO for any purpose without compensation. Disclosure shall constitute an assignment of all right, title and interest in such information to AVO.

### **13.6 REVIEWS.**

AVO does not and cannot review all communications and materials posted or uploaded to the service and is not responsible for the content of these communications and materials. However, AVO reserves the right to block or remove communications or materials that it determines to be (a) abusive, defamatory, or obscene, (b) clearly false or misleading, (c) in violation of a copyright, trademark or, other intellectual property right of another, or (d) libelous, harassing, vulgar, sexually explicit, (e) inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic, or (f) unrelated to the goods or services offered by or available at the Site or App.

### **13.7 GOVERNING LAWS IN CASE OF DISPUTE; ARBITRATION; JURISDICTION.**

#### **13.7.1 Resolution Of Claims Or Disputes.**

You hereby agree that any claim or dispute between You and AVO arising out of or relating in any way to the Terms and Conditions, Your purchase of the products via the Service, or use of the products You order must be resolved through final, binding arbitration. This arbitration obligation applies regardless of whether the claim or dispute involves a warranty, tort, fraud, misrepresentation, product liability, negligence, violation of a statute, or any other legal theory.

#### **13.7.2 Waiver Of Right To Bring Claims In Court And To Have Them Heard By A Judge And Jury.**

YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT YOU EXPRESSLY WAIVE THE RIGHT TO BRING A LAWSUIT IN COURT BASED ON ANY CLAIMS OR DISPUTES DESCRIBED IN SECTION 13.7.1 ABOVE, AND THAT YOU EXPRESSLY WAIVE THE RIGHT TO HAVE SUCH LAWSUIT RESOLVED BY A JUDGE OR JURY, AND, AS SUCH, YOU HEREBY AGREE TO RESOLVE ANY AND ALL CLAIMS DESCRIBED IN SECTION 13.7.1 ABOVE VIA BINDING ARBITRATION PER THE TERMS AND CONDITIONS SET FORTH IN SECTIONS 13.7.3 AND 13.7.4 BELOW.

#### **13.7.3 Limitation Of Legal Remedies.**

All arbitrations under these Delivery & Sale Terms shall be conducted on an individual (not a class-wide) basis, and an arbitrator shall have no authority to certify a class or award class-wide relief. You acknowledge and agree that with regard to any claims hereunder, You may not seek to, and an arbitrator or court may not, join or consolidate Your claims with any other similar claims and You agree You will not proceed in any court or arbitration proceedings as a representative of others, join in any court or arbitration proceedings brought by any other person, and understand that You may not be included as a member of any class that may be certified by a court or arbitrator. Your waivers of Your rights to bring or participate court proceedings and as a representative or member of a class applies specifically, but is not limited to, claims brought under New York's Unfair and Deceptive Trade Practices Act, False Advertising Act and its Consumer Legal Remedies Act, and any other state consumer protection laws.

#### **13.7.4 Arbitration Procedures.**

Before commencing any arbitration proceedings under these Terms and Conditions, You must first present Your claims or disputes to AVO by calling (205) 843-9893 and asking for the customer service department and allowing AVO the opportunity to resolve the claims or disputes. If Your claims or disputes are not resolved within sixty (60) days, You may commence arbitration proceedings in accordance with this Section 13.7.1. The arbitration of any claim or dispute hereunder shall be conducted pursuant to the American Arbitration Association's ("AAA") United States Commercial Dispute Resolution Procedures, which are available by calling the AAA, at 1-800-778-7879, or by visiting its website at [www.adr.org](http://www.adr.org).

Additionally:

The arbitration of any claims or disputes hereunder shall be conducted in the State of New York.

All administrative expenses of arbitration proceedings commenced hereunder shall be paid by AVO but only for those cases with claims for less than \$10,000.00.

**Attorneys Fees.** You acknowledge and agree that each party shall pay the fees and costs of its own attorneys, experts, and witnesses incurred in connection with any arbitration or court proceeding between the parties notwithstanding any prevailing parties attorneys' fees provision a part of any statute under which You may bring a claim.

**Choice Of Law.** Your purchase of the products and the Terms and Conditions shall be governed by the United States Federal Arbitration Act and the laws of the state of New York. The validity, effect, and enforceability of the arbitration provisions of the Terms and Conditions and of the waiver of class action lawsuit and waiver of class-wide arbitration, if challenged, are to be determined solely by a court of competent jurisdiction and not by an arbitrator.

**Opt-Out.** You may opt-out of Sections 13.7.1, 13.7.2, 13.7.3, and 13.7.4 herein by sending a notice ("Rejection Notice") to AVO no later than sixty (60) days after Your receipt of the goods purchased using this Site or App. You must mail the Rejection Notice by certified mail return receipt requested or messenger service (e.g. Federal Express) to AVO at Attn.

Customer Service, The AVO Shopping Company, 328 East 25th Street, New York NY, 10010.

In the event of any dispute concerning whether You provided a Rejection Notice within sixty (60) days, You must provide a signed receipt confirming AVO received the Rejection Notice within sixty (60) days.

### **14. COMPLIANCE WITH LAW; NOT FOR RESALE.**

Customer agrees to comply with all applicable laws and regulations of the state of New York and New York City. Customer agrees and represents that it is buying for its own internal use only, and not for resale.

### **15. HEADINGS.**

The section headings used herein are for convenience of reference only and do not form a part of these Terms and Conditions, and no construction or inference shall be derived therefrom.

### **ACCEPTANCE.**

By ordering any product(s) via the Non-Alcoholic Services or Alcohol Services, Customer hereby agrees to be bound by these Terms and Conditions of Use, Terms and Conditions of Alcohol Purchases, Generally Applicable Terms and Conditions, and Privacy Policy.

**ENTIRE AGREEMENT.**

The Terms and Conditions of Use, Terms and Conditions of Alcohol Purchases, Generally Applicable Terms and Conditions, Privacy Policy, the terms of any order You may submit through the Service, and any other terms to which a link is provided, shall be the sole terms of the agreement between You and AVO regarding Your use of the Non-Alcoholic Services and/or Alcohol Services.