

Terms of Use

Last Updated: September 2006

THE FOLLOWING AGREEMENT DESCRIBES THE TERMS UNDER WHICH ACTIVE SPORTSWEAR OUTLET OFFERS YOU ACCESS TO OUR WEB SITE AND RELATED SERVICES

I. GENERAL

These Terms of Use (“TOU”) constitute a legal agreement between you and Active Sportswear Outlet, the provider of this web site and related services (the “Active Sportswear Outlet Site”). Your use of the Active Sportswear Outlet Site is subject to the terms laid out in this document, so you should take the time to fully understand how it governs your relationship with Active Sportswear Outlet and how it affects the way you use the Active Sportswear Outlet Site. By your continued use of the Active Sportswear Outlet Site, you expressly agree to the terms found in this TOU. This TOU constitutes your entire agreement with Active Sportswear Outlet regarding the Active Sportswear Outlet Site and governs any and all of your use of the Active Sportswear Outlet Site. It supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Active Sportswear Outlet with respect to the Active Sportswear Outlet Site. You agree that the TOU is not intended to confer and does not confer any rights or remedies upon any person other than you and Active Sportswear Outlet. We may amend the TOU at any time, from time to time, by posting an amended TOU on the Active Sportswear Outlet Site. Any changes to the TOU will become effective immediately upon posting and may be changed without notice to you. This TOU may not be otherwise amended except in a writing signed by you and Active Sportswear Outlet. If you have questions regarding this agreement please contact Active Sportswear Outlet through the contact form on the Active Sportswear Outlet Site.

Section 1.1 Modifications

From time to time it may be necessary for Active Sportswear Outlet to update or revise certain provisions of the TOU. By using the Active Sportswear Outlet Site and accepting the TOU, you agree that Active Sportswear Outlet may modify the terms of the TOU, including, but not limited to, those terms related to the charges (if any) associated with your use of the Active Sportswear Outlet Site. You are responsible for regularly reviewing the latest version of the TOU, and any additional terms and conditions that may be posted. Your continued use of the Active Sportswear Outlet Site constitutes your agreement to all such terms, conditions, and notices. If you do not agree to the changes proposed by Active Sportswear Outlet, or to any of the terms in the TOU, your only remedy is to stop using the Active Sportswear Outlet Site.

Section 1.2 Privacy

Certain information about you is subject to our Privacy Policy. For more information, see our full privacy policy at <http://www.activesportswearoutlet.com/privacy.pdf>. Notwithstanding the foregoing, Active Sportswear Outlet reserves the right at all times to disclose any information as Active Sportswear Outlet deems necessary to satisfy any applicable

law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Active Sportswear Outlet's sole discretion. You understand and agree that the Active Sportswear Outlet Site Privacy Policy, including Active Sportswear Outlet's enforcement of that policy, is not intended to confer, and does not confer, any rights or remedies upon any person. We may change our Privacy Policy from time to time, and our changes are effective upon the posting of those changes on the Active Sportswear Outlet Site. This posting may be done without notice to you, as provided in the Privacy Policy.

II. USING THE ACTIVE SPORTSWEAR OUTLET SITE

Section 2.1 Inappropriate Uses

The Active Sportswear Outlet Site must not be used:

(a) to store, publish, distribute, or otherwise disseminate unlawful material or information including, but not limited to: threatening, harassing, defamatory, obscene, vulgar, indecent, hateful, objectionable, tortuous, libelous, deceptive, or fraudulent information and materials, or information and materials that constitute or give rise to claims of an invasion of another person's privacy;

(b) to conduct any activity that is a violation of any State or Federal law or to request unlawful services or materials;

(c) harm minors in any way;

(d) impersonate any person or entity, including, but not limited to, a Active Sportswear Outlet employee or representative, or to falsely state or otherwise misrepresent your affiliation with a person or entity;

(e) to store, publish, distribute, or otherwise disseminate child pornography or similar material;

(f) in the furtherance of any activity that infringes (directly or indirectly) upon the intellectual property rights of others, including, but not limited to, copyrights, trademarks, service marks, trade secrets, and patents;

(g) to interfere with any other party's use and enjoyment of the Active Sportswear Outlet Site;

(h) in any way that deliberately degrades or disables the Active Sportswear Outlet Site or any other computer system or to prevent or impede the delivery of any legitimate data;

(i) to make inappropriate postings to newsgroups, chat rooms, electronic bulletin boards and any other forum on the Active Sportswear Outlet Site or elsewhere;

(j) by persons under the age of 18 to purchase products without the involvement of a parent or guardian.

You agree that you will not take any action that imposes an unreasonable or disproportionately large load on our infrastructure. Many of the features and information on the Active Sportswear Outlet Site are updated on a real time basis and are proprietary to us or are licensed to Active Sportswear Outlet by third parties. You agree that you will not copy, reproduce, alter, modify, create derivative works, or publicly display any content (except for content you provide to us) from the Active Sportswear Outlet Site without the prior expressed written permission of Active Sportswear Outlet or the appropriate third party.

III. CONTENT

Section 3.1 License

Active Sportswear Outlet grants you a limited license to access and make personal use of the Active Sportswear Outlet Site and not to download (other than page caching) or modify it, or any portion of it, except with the express written consent of Active Sportswear Outlet. This license does not include any resale or commercial use of the Active Sportswear Outlet Site or its contents; any collection or use of any product listings, descriptions, or prices; any derivative use of this site or its contents; any downloading or copying of account information; or any use of data mining, robots, or similar data gathering and extraction tools. Any unauthorized use terminates the permission or license granted by Active Sportswear Outlet. You are granted a limited, revocable, and nonexclusive right to create a hyperlink to the home page of Active Sportswear Outlet (activesportswearoutlet.com) so long as the link does not portray Active Sportswear Outlet, or its products or services, in a false, misleading, derogatory, or otherwise offensive manner.

Active Sportswear Outlet does not claim ownership of any information, data, text, software, music, sound, photographs, graphics, video, messages or other materials (“Content”) you submit or make available for inclusion on the Active Sportswear Outlet Site. However, with respect to submitted Content you may post on the Active Sportswear Outlet Site, you grant Active Sportswear Outlet a world-wide, royalty free and non-exclusive license(s) to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Active Sportswear Outlet Site solely for the purposes of providing the Active Sportswear Outlet Site services. This license exists only for as long as you elect to continue to include, transmit or store such Content on the Active Sportswear Outlet Site and will terminate at the time you remove or Active Sportswear Outlet removes such submitted Content from the Active Sportswear Outlet Site. You expressly warrant you have the right to grant this license in any Content you upload, store or transmit to or through the Active Sportswear Outlet Site. If you do not have the right to grant such license, you should not be uploading, storing or transmitting such material, and doing so will be a breach of the TOU.

You acknowledge that Active Sportswear Outlet may or may not pre-screen Content, but that Active Sportswear Outlet and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or move any Content that is available via the Active Sportswear Outlet Site. Without limiting the foregoing, Active Sportswear Outlet and its designees shall have the right to remove any submitted Content that violates the TOU or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of

such Content. In this regard, you acknowledge that you may not rely on any Content created by, or submitted to Active Sportswear Outlet.

Section 3.2 Links

Active Sportswear Outlet may provide, or third parties may provide, links to other World Wide Web sites or resources. Because Active Sportswear Outlet has no control over such sites and resources, you acknowledge and agree that Active Sportswear Outlet is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that Active Sportswear Outlet shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

Section 3.3 Active Sportswear Outlet's Intellectual Property Rights

The Content provided by Active Sportswear Outlet (that is Content other than as submitted by site users) on the Active Sportswear Outlet Site, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Active Sportswear Outlet or its content suppliers, partners, or affiliates, and is protected by U.S. and international copyright laws. The compilation of all Content on the Active Sportswear Outlet Site is the exclusive property of Active Sportswear Outlet and is protected by U.S. and international copyright laws. All software used on this site is the property of Active Sportswear Outlet or its software suppliers and is protected by U.S. and international copyright laws. You acknowledge and agree that the Active Sportswear Outlet Site contains proprietary and confidential information that is protected by applicable U.S. and international intellectual property and other laws. Except as expressly authorized by Active Sportswear Outlet, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Active Sportswear Outlet Site, including its interface, in whole or in part, and other logos and product and service names that are trademarks of Active Sportswear Outlet (the "Active Sportswear Outlet Marks"). Unless you have written permission, you agree not to display or use in any manner, the Active Sportswear Outlet Marks.

IV. WARRANTY AND LIMITATION OF LIABILITY

THE ACTIVE SPORTSWEAR OUTLET SITE IS PROVIDED ON AN "AS IS" BASIS AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. WE AND OUR SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- A. YOUR USE OF THE ACTIVE SPORTSWEAR OUTLET SITE IS AT YOUR SOLE RISK. OUR SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR**

IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

- B. ACTIVE SPORTSWEAR OUTLET MAKES NO WARRANTY THAT (a) USING THE ACTIVE SPORTSWEAR OUTLET SITE WILL MEET YOUR REQUIREMENTS, (b) SERVICE WILL BE UNINTERRUPTED, SECURE, TIMELY, OR ERROR-FREE, (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF OUR SERVICES WILL BE ACCURATE OR RELIABLE, (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE ACTIVE SPORTSWEAR OUTLET SITE WILL MEET YOUR EXPECTATIONS, AND (e) ANY ERRORS IN THE ACTIVE SPORTSWEAR OUTLET SITE WILL BE CORRECTED.**

- C. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE ACTIVE SPORTSWEAR OUTLET SITE IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.**

- D. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ACTIVE SPORTSWEAR OUTLET OR THROUGH OR FROM THE ACTIVE SPORTSWEAR OUTLET SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.**

IN NO EVENT SHALL WE OR OUR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE ACTIVE SPORTSWEAR OUTLET SITE, OUR SERVICES, OR THIS AGREEMENT HOWEVER ARISING, INCLUDING NEGLIGENCE. OUR LIABILITY, AND THE LIABILITY OF OUR SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE AMOUNT OF FEES YOU PAID TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO ANY PURPORTED LIABILITY.

V. INDEMNIFICATION

You agree, at your own expense, to indemnify, defend and hold harmless Active Sportswear Outlet and its employees, representatives, subsidiaries, affiliates, officers, directors, suppliers and agents (collectively, the "Active Sportswear Outlet Indemnified Parties"), against any claim, suit, action or other proceeding against the Active Sportswear Outlet Indemnified Parties, by a third party, to the extent that such claim, suit, action or other proceeding is based on or arises in connection with your use of the Active Sportswear Outlet Site (or the use of any of your sub-accounts) specifically including (i) a violation of the terms set forth in the TOU (ii) a

claim that any use of the Active Sportswear Outlet Site by you infringes any third party intellectual property right, is libelous or defamatory, or otherwise results in injury or damage to anyone. You agree to pay any and all costs, damages and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by or in connection with or arising from any such claim, suit, action or proceeding attributable to any such claim.

VI. ARBITRATION

Any legal controversy or legal claim arising out of or relating to this TOU or the Active Sportswear Outlet Site, excluding legal action taken by Active Sportswear Outlet to collect our fees and/or recover damages for, or obtain an injunction relating to, Active Sportswear Outlet or the Active Sportswear Outlet Site operations, intellectual property, and our services, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association or another arbitration organization of Active Sportswear Outlet's choosing. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party, unless in our sole judgment, Active Sportswear Outlet wishes to consolidate the legal controversy of two or more parties in any legal action. The arbitration shall be conducted in San Antonio, Texas, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Active Sportswear Outlet may seek any interim or preliminary relief from a court of competent jurisdiction in Dallas, Texas necessary to protect our rights pending the completion of arbitration. Should you file an action contrary to this provision, Active Sportswear Outlet may recover from you our reasonable attorney fees and costs. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of this site or services or the TOU must be filed within six (6) months after such claim or cause of action arose or be forever barred. Notwithstanding anything else to the contrary in this TOU, Active Sportswear Outlet shall always have and retains the right to pursue legal action of any kind or nature whatsoever in any appropriate jurisdiction in order to protect our interests.

VII. TERMINATION

You agree that Active Sportswear Outlet may, *under certain circumstances and without prior notice*, immediately terminate your access to the Active Sportswear Outlet Site and Active Sportswear Outlet services. Cause for such termination shall include, but not be limited to, (a) breaches or violations of the TOU or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by you (self-initiated termination), (d) discontinuance or material modification to the Active Sportswear Outlet service (or any part thereof), (e) unexpected technical or security issues or problems, and (f) extended periods of inactivity. Termination of your Active Sportswear Outlet services includes (a) removal of access to all Active Sportswear Outlet services and the Active Sportswear Outlet Site, (b) removal of access and deletion of all related information, files and content associated with or inside services provided to you by Active Sportswear Outlet (or any part thereof), and (c) barring further use of the Active Sportswear Outlet Site and Active Sportswear Outlet services. Further, you agree that all terminations for cause shall be made in Active Sportswear Outlet's sole discretion and that Active Sportswear Outlet shall not be liable to you or any third party for any termination of the Active Sportswear Outlet Site or Active Sportswear Outlet services.

VIII. MISCELLANEOUS

Section 8.1 No Agency.

You and Active Sportswear Outlet are independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this TOU.

Section 8.2 Notice

Any notice by us to you may be made via either email or first class mail.

Section 8.3 Choice of Law, Compliance with Applicable Laws

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. The laws of the State of Texas, excluding its conflicts-of-law rules, govern the TOU and your account. User conduct may be subject to other local, state, national, and international laws. You expressly agree that exclusive jurisdiction and venue for any claim or dispute with the Active Sportswear Outlet Site or relating in any way to your account or your use of the Active Sportswear Outlet Site resides in the courts of Dallas County, Texas, and you further agree and expressly consent to the exercise of personal jurisdiction in the courts of Texas in connection with any such dispute including any claim involving Active Sportswear Outlet or its affiliates, subsidiaries, employees, contractors, officers, directors, telecommunication providers and content providers.

You agree to abide by U.S. and other applicable export control laws and not to transfer, by electronic transmission or otherwise, any content or software subject to restrictions under such laws to a national destination prohibited under such laws, without first obtaining, and then complying with, any requisite government authorization. You further agree not to upload to the Active Sportswear Outlet Site any data or software that cannot be exported without prior written government authorization, including, but not limited to, certain types of encryption software. This assurance and commitment shall survive termination of this agreement.

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes any portion of this site or access to the Active Sportswear Outlet Site or our services.